

**AGREEMENT OF SETTLEMENT AND COMPROMISE
TO RESOLVE THE CAYUGA INDIAN NATION OF NEW YORK'S LAND TITLE
AND TRESPASS CLAIMS OF LANDS SITUATED IN THE STATE OF NEW YORK**

Subject to the authorization and ratification by an Act of Congress, this Agreement of Compromise and Settlement (“Agreement”) is made as of the 17th day of November, 2004 between the Cayuga Indian Nation of New York (“Nation”) and the State of New York (“State”); sometimes referred to collectively as the “Parties.”

RECITALS

WHEREAS, on February 25, 1789, the State and the historic Cayuga Nation of Indians (“CNI” or “Cayugas”) entered into a treaty (“1789 Treaty”) which provided for the cession of Cayuga lands to the State, and set aside an area comprising approximately 64,015 acres for the use of the Cayugas (“Claim Area”); and

WHEREAS, in 1790, Congress enacted the first in a series of Indian Trade and Intercourse Acts (Act of July 22, 1790, ch. 3, 1 Stat. 137) (“ITIA”). The 1790 Act was replaced by the Indian and Trade Act of 1793 (Act of March 1, 1793, ch. 19, 1 Stat. 329) which provided in relevant part, “That no purchase or grant of lands, or any title or claim thereto, from any Indians or nation of Indians, within the bounds of the United States, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution....” With some modifications, this provision of the ITIA was subsequently reenacted and is today contained in 25 U.S.C. § 177; and

WHEREAS, in 1794, the United States concluded a treaty with the Six Nations of Indians, in which the United States “acknowledged” the area set aside for the use of the Cayugas in the 1789 Treaty as their reservation, Treaty of Canandaigua, 7 Stat. 44, Article II; and

WHEREAS, on July 27, 1795, the State entered into a treaty (“1795 Treaty”) with the Cayugas which provided for the cession of the Cayugas’ interest in the majority of the land in the Claim Area; and

WHEREAS, on May 30, 1807, the State entered into a treaty (“1807 Treaty”) with the Cayugas which provided for a cession of the Cayugas’ interest in the remaining land in the Claim Area; and

WHEREAS, after the 1795 and 1807 Treaties, the State conveyed land within the Claim Area, in large part, to private purchasers through a series of transactions over a number of years; and

WHEREAS, in 1980, the Nation filed two separate actions in the United States District Court for the Northern District of New York, against various state officials and departments, municipalities and a defendant class of persons who asserted an interest in land in the Claim Area alleging that the 1795 and 1807 Treaties violated the ITIA, seeking a declaration of the Nation’s ownership of and right to possess lands in the Claim Area, an award of fair rental value for the approximately 200 years during which they have been out of possession, and other monetary and protective relief. The two actions were later consolidated and the consolidated action was entitled Cayuga Indian Nation of New York v. Pataki, No. 80-CV-930/No. 80-CV-960 (“Land Claim”); and

WHEREAS, in 1992, the District Court granted a motion by the United States of America (“United States”) to intervene as a plaintiff-intervenor in the Land Claim on its own behalf and on behalf of both the Nation and the Seneca-Cayuga Tribe of Oklahoma (“Tribe”); and

WHEREAS, after making certain determinations with respect to liability and remedies, the District Court in the Land Claim ordered that the case proceed against the State first as to damages; and

WHEREAS, a jury rendered a verdict for \$36,911,682.62 in damages and the District Court awarded \$211,000,326.80 in prejudgment interest, and thereafter entered a judgment against the State in the Land Claim in the total amount of \$247,911,999.42; and

WHEREAS, there is currently pending in the United States Court of Appeals for the Second Circuit an appeal from the judgment entered, and certain rulings made by, the District Court in the Land Claim and certain cross-appeals by the Nation and the Tribe; and

WHEREAS, the claims made against the municipal defendants and the defendant class in the Land Claim have not been fully resolved by the District Court and are currently still pending; and

WHEREAS, in 2003, the Nation filed an action against the Village of Union Springs, Town of Springport, and County of Cayuga, New York in the United States District Court for the Northern District of New York entitled Cayuga Indian Nation of New York v. Union Springs, et al., No. 03-CV-1270 (“Union Springs”), in which the Nation asserted certain claims with respect to jurisdiction over land purchased by the Nation within the Claim Area; and

WHEREAS, the District Court entered summary judgment in favor of the Nation against the defendants in Union Springs on April 23, 2004; and

WHEREAS, there is currently an appeal from such decision in Union Springs pending in the United States Court of Appeals for the Second Circuit; and

WHEREAS, pendency of the Land Claim and Union Springs has resulted in uncertainty about the status of the land in the Claim Area, and economic hardships for the Nation and the residents of the State, including residents of the Counties of Cayuga and Seneca; and

WHEREAS, the Parties believe it is in their mutual best interests to settle the claims asserted by the Nation in the Nation’s Land Claim and that all other actions regarding any

liability stemming from the purchase of land within the Claim Area by the State or the authority of the Nation over land acquired in the Claim Area should be dismissed.

NOW THEREFORE, in consideration of the following terms, conditions, and promises, the Parties agree as follows:

TERMS OF AGREEMENT

I. DEFINITIONS

A. For the purposes of this Agreement:

(1) The term “Aboriginal Territory” means the full extent of the area now located in the State of New York over which the Cayugas at any time had or claimed an aboriginal or original right of possession, use or occupation, whether described as aboriginal title, original title, Indian title, or otherwise.

(2) The term “Class II Gaming” means gaming as defined in 25 U.S.C. § 2703(7).

(3) The term “Class III Gaming” means gaming as defined in 25 U.S.C. § 2703(8).

(4) The term “Counties” means Seneca County, New York, and Cayuga County, New York.

(5) The term “Monticello Raceway Property” means the certain plot, piece, or parcel of land situated, lying and being in the Village of Monticello, Town of Thompson, County of Sullivan and State of New York being more particularly described as Parcel No. 1 on “Final Revised Subdivision Plat of Lands of Catskill Development, L.L.C.” dated May 25, 1999 and filed in the Office of Sullivan County Clerk on February 4, 2000 as Map No. 8-271. This land shall not be utilized for any activity other than those authorized gaming and commercial activities traditionally associated with the operation and conduct of a gaming facility.

(6) The term “Net Drop” means money dropped into slot machines, after payout but before expenses, and totaled on a cumulative quarterly basis to be adjusted annually at the end of the relevant fiscal year.

(7) The term “Slot Machine” shall be defined as a video facsimile or slot machine which means any mechanical, electrical or other device, contrivance or machine, which upon insertion of a coin, currency, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance or both, may deliver or entitle the person playing or operating the machine to receive cash or tokens to be exchanged for cash or to receive any merchandise or thing of value, whether the payoff is made automatically from the machine or in any other manner whatsoever, but shall not include “video lottery gaming devices” as such term is defined in paragraph (8) of this section.

(8) The term “Transfer” means any transaction, including, but not limited to the 1795 and 1807 transactions at issue here, involving, or the purpose of which was to effect, a change in title to or control of any land or natural resource, and any act, event, or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources, including any sale, cession, grant, lease, allotment, partition, or conveyance, whether pursuant to a treaty, compact or statutes of a State or otherwise.

(9) The term “Video Lottery Gaming Devices” shall be defined as a network of five or more player terminals, connected to the on-line system, with touch-screen, button-controlled video screen or other electronic display devices, including but not limited to single or multi-stage displays, secondary electronically-controlled displays such as wheels, dice, or other displays or other such devices operated by the New York Lottery as a result of implementation of Part C of Chapter 383 of the Laws of 2001, as amended.

II. EFFECTIVENESS OF AGREEMENT

A. This Agreement shall not take effect or be binding upon the Parties, and shall not become effective, until all of the following actions have been performed and completed:

(1) the Agreement is approved and duly executed by each of the respective Parties in accordance with and pursuant to requisite authority;

(2) the New York State Legislature enacts and the Governor approves any legislation, consistent with the terms of this Agreement, that may be necessary to implement this settlement or authorize the limited waiver of Eleventh Amendment immunity from suit contained herein (“State Settlement Legislation”);

(3) the United States Congress enacts and the President signs a legislative act which implements and does not alter the essential terms and conditions of this Agreement (“Federal Settlement Legislation”) and provides for:

(a) the authorization and ratification of this Agreement;

(b) effective immediately following the Final Determination of the Land Claim in accordance with Section IV (A) of this Agreement, the confirmation, approval and ratification, *nunc pro tunc*, of all of the transactions by which the State or others obtained land whether by cession, purchase, grant, lease or other conveyance from any Indian nation, tribe, or part thereof or successor thereto, or individual in the Aboriginal Territory or Claim Area, including without limitation the land transactions at issue in the Land Claim, subject to the terms and conditions of this Agreement;

(c) the diminishment of any reservation of the Nation in the Aboriginal Territory or Claim Area to the extent provided in Section VI of this Agreement;

(d) effective immediately following the Final Determination of the Land Claim in accordance with Section IV (A) of this Agreement, the disestablishment of any reservation that may have existed in the Aboriginal Territory or Claim Area other than that provided for in Section VI of this Agreement;

(e) effective immediately following the Final Determination of the Land Claim in accordance with Section IV (A) of this Agreement, the authorization for the Nation to possess and exercise sovereignty within the reservation in the Claim Area provided for in Subsection (A)(2) of Section VI of this Agreement pursuant to the terms and conditions set forth in that Section;

(f) the authorization for the Nation to possess and exercise sovereignty over land provided for in Subsections (A)(1), (A)(3) and (A)(4) of Section VI of this Agreement pursuant to the terms and conditions set forth in that Section;

(g) land to be taken into trust under 25 U.S.C. § 2719(b) and pursuant to the standards set forth in 25 C.F.R. § 151 for the Nation for the purposes of owning and operating Indian gaming facilities on land where the tribes are permitted to own and operate such facilities under the terms and conditions of this Agreement;

(h) effective immediately following the Final Determination of the Land Claim in accordance with Section IV (A) of this Agreement, the extinguishment of any and all claims and rights arising from or relating to the transfer of land from the Cayugas, the Nation, or any predecessor thereto, part thereof, or successor thereto to the State, or the occupation, use or possession of any land so transferred, of the Nation, or any predecessor thereto, part thereof, or successor thereto, and all other Indian nations, tribes or individuals claiming rights to lands within the Aboriginal Territory or Claim Area, and all treaty-based, common law, and statutory land claims and rights of such

tribal groups or individuals to all or any portion of the Aboriginal Territory or Claim Area;

(i) a waiver of tribal sovereign immunity for the limited and specific purposes provided for in this Agreement;

(j) jurisdiction of the United States District Court for the Northern District of New York over actions arising under, relating to, or seeking to enforce this Agreement, as provided for in this Agreement and the Federal Settlement Legislation; and

(k) a direction to the Secretary of the Interior (“Secretary”) to take the Monticello Raceway Property into trust for the Nation for the purpose of owning and operating a Class II and Class III gaming facility on such land under the terms and conditions of this Agreement.

(4) The Nation and the State negotiate and execute a tribal-state gaming compact, as referenced in Section VII below, which compact complies in all respects with the provisions and requirements of the New York State Constitution and New York law, including but not limited to, the requirements of Article 2, Section 12(b) of the Executive Law, New York State Consolidated Laws;

(5) The Nation passes whatever tribal resolutions are necessary and comply with all other tribal governmental procedures necessary to effectuate the terms and provisions of this Agreement including, but not limited to, the waivers of tribal sovereign immunity made in this Agreement, and delivers copies of the resolution and all other mandates passed by the Nation to the State and the Secretary of the Interior;

(6) The Secretary takes the Monticello Raceway Property into trust for the Nation and approves the gaming compact entered into between the Nation and the State pursuant

to the Indian Gaming Regulation Act, 25 U.S.C. §§2701-2721, and referenced in Section VII below.

B. This Agreement shall terminate, and the Parties shall have no further obligation to one another, in the event that the actions required under each of subsections A(1), (2), (3), (4), (5) and (6), above, have not been performed and completed by September 1, 2005; provided, however, that such deadline may be extended by the mutual written consent of the Parties.

III. AMENDMENT OF THE AGREEMENT

A. At any time prior to the enactment of the Federal Settlement Legislation and the State Settlement Legislation, the Parties may agree to amend the Agreement by mutual written consent signed by each and all the Parties.

B. Following the enactment of the Federal Settlement Legislation or the State Settlement Legislation, the Parties may amend the Agreement by mutual written consent signed by each and all the Parties for purposes of making technical corrections only.

IV. MANAGEMENT OF PENDING LITIGATION

A. Promptly following the effective date of this Agreement pursuant to the provisions of Section II of this Agreement, the Parties shall take the following actions regarding the appeals of the Land Claim decision to the Second Circuit Court of Appeals:

(1) The Nation (and to the extent applicable the United States) shall voluntarily withdraw all of their cross-appeals, including, but not limited to, cross-appeals with respect to any issue such parties are permitted to raise under 28 U.S.C. §1292(b), with prejudice, and undertake to perform all steps reasonably necessary to accomplish that dismissal; provided, however, that following the execution of this Agreement, the Parties shall jointly move for a stay of the appeals and cross-appeals until the effective date of this Agreement;

(2) The appeal filed by the defendants in the Land Claim shall continue, unaffected by any provisions of this Agreement, until all possible avenues of judicial review, including the institution and full and final appeal of any proceedings on remand, have been exercised or have become procedurally impossible, so that there is a final determination of the issues presented in the Land Claim (“Final Determination”);

(3) Following the Final Determination, the Nation shall dismiss with prejudice all claims against any person other than the State still pending in the District Court and undertake to perform all steps reasonably necessary to accomplish that dismissal; and

(4) If Final Determination results in a judgment against the State, then the Nation shall deliver to the State a satisfaction of judgment, acceptable in form to the State, stating that the judgment entered in the Land Claim is fully satisfied.

B. Promptly following the effective date of this Agreement pursuant to the provisions of Section II of this Agreement, the Nation shall move and take all steps reasonably necessary to dismiss the pending appeal in the Second Circuit, to vacate the judgment entered and dismiss with prejudice all claims asserted in Union Springs provided, however, that following the execution of this Agreement, the Nation shall move for a stay of appeal until the effective date of this Agreement.

V. THE EFFECT OF THE FINAL DETERMINATION

A. The State’s obligation to contribute any monetary payment to the Nation and to agree to the exercise of sovereignty over land possessed by the Nation within the Claim Area with the exception of those parcels referred to in Sections VI(A)(1) and (4) is contingent on the Final Determination of the Land Claim. Such obligations shall be determined according to the following provisions:

(1) if the Final Determination affirms the judgment entered by the United States District Court for the Northern District of New York in the Land Claim in its entirety or results in the entry of judgment in a reduced amount that is not less than \$150,000,000.00:

(a) then the State shall pay the Nation \$150,000,000.00 (“Settlement Amount”) in ten (10) equal annual installments beginning January 1, 2007; and

(b) the Nation may possess and exercise sovereignty on land within the Claim Area pursuant to the terms of Section VI of this Agreement.

(2) if the Final Determination results in a judgment against the State awarding money to such entities against the State that is less than \$150,000,000.00:

(a) then the State shall pay the Nation the amount of the reduced judgment as determined by the Final Determination (“Reduced Settlement Amount”) in ten (10) equal annual installments beginning January 1, 2007; and

(b) the Nation may possess and exercise sovereignty on land within the Claim Area pursuant to the terms of Section VI of this Agreement.

(3) if the Final Determination results in a judgment in favor of the State (i.e., there is no monetary award against the State), then the State shall not pay any amount to the Nation and the Nation shall not be entitled to possess and exercise of sovereignty on any land within the Claim Area other than that described in Subsections (A)(1) and (A)(3) of Section VI of this Agreement.

B. Notwithstanding the actual amount of the judgment entered in the Land Claim as a result of the Final Determination, in no event shall the State be obligated to pay any amount in excess of the Settlement Amount described in Subsection A(1) of this Section V. The State’s undertaking to pay the Settlement Amount or Reduced Settlement Amount pursuant to Subsection A(1) or A(2) of this Section V shall constitute full and final satisfaction of any

obligation of the State to pay the amount of any judgment entered against the State or interest on the amount of such judgment. Under no circumstances shall the State have any obligation to pay any post-judgment interest.

C. Upon delivery of the amount described in Subsection A(1) or A(2) of this Section V, the State shall have no further liability, obligation, or responsibility to any party for handling, disposition, distribution, or allocation of the said amount.

D. In the event that any of the State payments are not paid as set forth in this Agreement, such failure to pay shall give rise to a cause of action by the Nation against the State for money damages for the amount authorized to be paid to the Nation under this Agreement, and the Nation is authorized to bring an action in the United States District Court for the Northern District of New York for such funds plus applicable interest. The State hereby specifically and expressly waives its immunity to suit, including the State's Eleventh Amendment immunity, for actions brought pursuant to this Subsection to the extent necessary for the Nation to bring any action at law or in equity to enforce the State's obligation to make the payments as set forth in this Agreement.

E. The State's agreement to pay the Settlement Amount or Reduced Settlement Amount is not, and shall not, be construed as an admission by the State as to the merits of any fact or claim asserted, or the validity or effect of the judgment entered by the District Court in the Land Claim.

VI. POSSESSION OF LAND WITHIN THE CLAIM AREA BY THE NATION

A. Notwithstanding the Federal Settlement Legislation or the State Settlement Legislation regarding ratification of transactions, extinguishment of claims, and reservation diminishment and disestablishment, the Nation may, pending Final Determination of the Land Claim (in the case of land described in Subsections (A)(1), (A)(3) and (A)(4) of this Section VI),

and following Final Determination of the Land Claim (in the case of all other land described in Subsection A of this Section VI), possess and exercise sovereignty on the land described below, which land shall be designated as “Cayuga Treaty Land”:

(1) land in no more than three parcels in Seneca County and three parcels in Cayuga County containing a combined total of no more than 2,500 acres, including land now possessed by the Nation within the Claim Area, with all lands within each parcel to be contiguous, but none of the parcels needs to be contiguous with any other parcel;

(2) up to a maximum of 10,000 acres of land located within the Claim Area, which shall include:

(a) land now possessed by the Nation within the Claim Area;

(b) land subsequently lawfully acquired by the Nation by purchase from willing sellers, by gift or by transfer, including any land described in Subsection (A)(1) of this Section VI, provided that any such gift or transfer is accepted by the Nation, and provided further that any land so acquired is designated as Cayuga Treaty Land. For purposes of designating land so acquired, including the 2,500 acres described in Subsection (A)(1) of this Section VI, as Cayuga Treaty Land, the following procedures will apply:

(i) The Nation shall provide to the Secretary written notice informing the Secretary of the date of acquisition, the identity of the parties from whom the land was acquired, the location and legal description of the subject land and its intention to designate such lands as Cayuga Treaty Land. Upon receipt of such notice from the Nation, the Secretary shall (A) provide the affected local government with notice of the Nation’s acquisition, and (B) provided that such

notice is received by the Secretary on a date following the date this Agreement becomes effective, immediately designate such lands as Cayuga Treaty Land; and

(c) land the United States may come to hold in trust for the Nation.

(3) additional lands within the Claim Area that may be taken into trust by the United States pursuant to the procedure for land into trust applications set forth in 25 C.F.R. § 151; provided, however, that no additional lands will be taken into trust without the prior written agreement of the county in which such land is located; and

(4) the Monticello Raceway Property once such land is taken into trust by the United States.

B. Nothing in this Agreement, the Federal Settlement Legislation, or the State Settlement Legislation shall be construed to authorize or permit the acquisition of land by or for the benefit of the Nation by or through condemnation proceedings or through the use of the doctrine of eminent domain.

C. All of the Cayuga Treaty Land possessed by the Nation, however held, shall be Indian reservation land, shall be subject to federal restrictions against alienation, and shall be Indian Country under 18 U.S.C. § 1151. Cayuga Treaty Land shall be exempt from taxation or lien or “in lieu of payment” or other assessment by the State or any political subdivision of the State; provided, however, that nothing contained herein shall be interpreted as restricting the Nation from voluntarily entering into agreements with political subdivisions of the State to reimburse such subdivisions for the delivery of specific municipal services on lands designated as Cayuga Treaty Land.

D. Notwithstanding any other provision, neither this Agreement nor its related legislation shall alter the applicability of federal law (including, but not limited to, 25 U.S.C. §§ 232, 233), federal treaties (including, but not limited to, the Treaty of Canandaigua), reservation

status or the nature of the Nation's title that would otherwise be applicable to the Nation or Cayuga Treaty Land.

E. Designation of land as Cayuga Treaty Land shall not extinguish any valid existing easements and rights of way for highways, railroads or utilities, which easements and rights of way shall continue in effect unless the holder of any such railroad, highway or utility easement and the Nation enter into voluntary written agreements terminating or altering such an easement or rights of way.

F. Any lands acquired by the Nation within the Claim Area other than those lands contemplated by Subsections (A)(1), (A)(2) and (A)(3) of this Section VI shall be held in fee by the Nation and, absent the prior written agreement of the county in which such land is located, shall not be taken into trust by the United States or otherwise considered Indian Country or subject to restrictions against alienation or be immune from state or local taxation. By this provision, the Nation, should it acquire lands outside of Cayuga Treaty Land, but within the Claim Area which are not taken into trust pursuant to this Section VI waives any right or interest it may have to hold such lands in reservation, trust or "Indian country" status, or any status which may preclude State and local taxing authorities from collecting taxes or revenues or otherwise exercising governmental jurisdiction over such lands.

G. In the event that a Final Determination is entered which, under the provisions of Subsection (A) of Section V of this Agreement, has the effect of precluding the Nation from possessing and exercising sovereignty over land within the Claim Area, then any land acquired by the Nation pursuant to Subsection (A)(2) of this Section VI shall not be subject to restrictions on alienation, have reservation, trust land, or "Indian country" status, or otherwise be considered immune from State or local taxation. By this provision and in such event, the Nation waives any right or interest to hold any lands acquired pursuant to Subsection (A)(2) of this Section VI in

reservation, trust or “Indian country” status, or any status which may preclude State and local authorities from collecting taxes or revenues or otherwise exercising governmental jurisdiction over such lands.

H. For the avoidance of doubt, and notwithstanding any other provision of this Agreement to the contrary, the Parties agree that (i) the Nation may acquire any lands described in Subsection (A) of this Section VI either directly or through an agency, authority or instrumentality of the Nation, and (ii) all lands described in Subsections (A)(1), (A)(3) and (A)(4) of this Section VI acquired by the Nation or any such agency, authority or instrumentality of the Nation shall have the status of “Indian County” both before and after the Final Determination is rendered.

VII. OPERATION OF GAMING FACILITIES BY THE NATION

A. The State and the Nation shall negotiate and enter into a mutually satisfactory gaming compact (“Compact”), subject to the review and approval of the Secretary, that will authorize the Nation to operate a Class III gaming facility at the Monticello Raceway Property once the subject land is taken into trust for the benefit of the Nation by the United States pursuant to the Federal Settlement Legislation. Such Compact:

(1) shall be effective after publication of notice of approval by the Secretary of the Interior of the United States in the Federal Register in accordance with 25 U.S.C. §2710(d)(3)(B), provided that the Compact has first been executed by the Nation and the Governor of the State of New York or his duly appointed representative, and shall terminate fourteen years following its effective date unless renewed pursuant to paragraph (2) below or terminated pursuant to paragraph (3) below.

(2) shall provide that, unless either the Nation or State objects in writing delivered to the other no later than one hundred twenty (120) days prior to the expiration of the

fourteen (14) year term, the term of the Compact shall be renewed automatically for an additional period of seven (7) years. In the event either the Nation or State does timely object to the automatic renewal of the term of the compact, the Nation and State shall meet promptly following the receipt of such written objection and use their best efforts to address the objecting party's concerns through frequent and regular good faith negotiations. In the event the objecting party's concerns cannot be resolved within a period of one hundred twenty (120) days following the commencement of such negotiations, the party may submit only the issue of the other party's good faith in the renewal negotiations to the Party Dispute Resolution provisions set forth in the Compact; provided, however, that during the pendency of dispute resolution, the terms of the Compact shall remain in effect.

(3) may be terminated by the Governor or the Nation, at their discretion, at any time if any of the following occurs:

(a) The Indian Gaming Regulatory Act, 25 U.S.C. § 2701 et seq., is repealed;

(b) The Nation adopts a resolution revoking Nation authority to conduct Class III gaming; or

(c) The other party commits a material breach, as determined pursuant to the dispute resolution provisions of the Compact.

(4) To effectuate such elective termination, written notice shall be served upon the Nation or the State and shall be effective no earlier than three (3) months following the date of service unless an earlier date is required by law.

(5) shall not authorize the operation of Video Lottery Gaming Devices;

(6) shall provide that the Nation shall not seek authorization to install or operate Video Lottery Gaming Devices;

(7) shall provide that the Nation and certain other compact authorized Indian nations or tribes shall have Indian exclusivity with respect to the installation and operation of, and no person or entity other than such an Indian nation or tribe shall be permitted to install or operate, Slot Machines within the geographic area defined by Bronx, Delaware, Greene, Kings, New York, Orange, Queens, Richmond, Rockland, Sullivan, Ulster and Westchester counties, subject to the following limitation:

(a) the Nation's right to operate and conduct gaming pursuant to the gaming compact shall cease to apply if the Nation fails to commence, on the Monticello Raceway Property:

(i) construction of a permanent gaming facility within six (6) months after the later of the effective date of the gaming compact or the date on which the final state and federal governmental approval is obtained authorizing such construction; or

(ii) class III gaming activities within a permanent gaming facility on such site within eighteen (18) months after the later of the effective date of the gaming compact or the date on which the final state and federal governmental approval is obtained authorizing construction of the facility.

(b) any prevention, delay or stoppage of the Nation's ability to meet the deadlines established in subsections (a)(i) and (ii), above, due to acts of God, orders of state or federal courts, enemy or hostile governmental action, war, civil commotion, terrorism, fire or natural disaster shall excuse the performance by the Nation for a period equal to any such prevention, delay or stoppage.

(8) shall provide that in exchange for the exclusive rights to installation and operation of the Slot Machines granted in this Agreement, the Nation will agree to contribute to the State a portion of the proceeds from the operation and conduct of Slot Machines for which exclusivity exists, based on the Net Drop of such machines and totaled and paid on a cumulative quarterly basis to be adjusted annually at the end of the relevant fiscal year, in accordance to the following schedule:

(a) 20% from the first year until the fourth year, with the first year commencing on the date on which the gaming facility established pursuant to the gaming compact begins operation; and

(b) 25% after the fourth year.

B. The State shall fully support the Nation's efforts to obtain all necessary regulatory approvals for, and to construct, open and operate, such Class III gaming facility.

C. In consideration of the State's commitment to negotiate and enter into such Class III gaming compact with the Nation, the Nation hereby agrees to cease any Class II gaming operations on Cayuga Treaty Land (excluding the Monticello Raceway Property) within two (2) years after its Class III gaming facility on the Monticello Raceway Property begins operation and for so long as it remains open, unless the county in which the Class II gaming is to occur and the Nation agree otherwise.

VIII. TAX PARITY AGREEMENT BETWEEN THE NATION AND THE STATE

A. The Nation and the State shall negotiate a tax parity compact for all sales by Nation vendors of alcohol, cigarettes, gasoline and other retail products and services to non-Indians on Cayuga Treaty Land. Such tax parity agreement shall form a part of, and be incorporated into, this Agreement. The agreement to enter into the tax parity agreement is subject to the following provisions:

(1) such compact shall go into force when the Class III gaming facility on the Monticello Raceway Property commences operation;

(2) such compact shall continue indefinitely without regard to the duration of operations at the Monticello Raceway Property;

(3) the State and the Nation shall jointly seek to amend the New York State Tax Law and any and all other provisions of New York law necessary to implement the terms of such compact; and

(4) such compact shall become effective upon the enactment of the Federal Settlement Legislation.

IX. ADDITIONAL PROVISIONS APPLICABLE TO LAND HELD BY THE NATION

A. The Nation shall negotiate with appropriate local government authorities for the provision of fire, police and other municipal services, and other appropriate local issues, for all Cayuga Treaty Land, on a mutually satisfactory basis.

B. The Nation shall adopt and enforce building codes for all construction on all Cayuga Treaty Land, which shall be no less stringent than the standards set forth in the International Business Code issued by the International Code Council, the National Electric Code, issued by the National Fire Protection Association, and the International Plumbing Code issued by the International Code Council and other standards referenced by the International Building Code, as revised from time to time.

C. The Nation shall comply with all federal and state environmental laws in relation to any Cayuga Treaty Land, and may adopt and enforce environmental standards no less stringent, provided that any environmental standards adopted by the Nation shall not affect any rights with respect to the use of or activities on land outside of the land held by the Nation.

D. In the event that the Nation undertakes to mine or otherwise extract minerals located beneath the surface of Cayuga Treaty Land and such mining or extraction affects, directly or indirectly minerals located in whole or in part under land owned by persons other than the Nation, the Nation agrees that it will enter into appropriate agreements with such other mineral owners to share on an equitable basis the proceeds from the mining or extraction and sale or use of such minerals. Disputes as to the obligation of the Nation to enter into such agreements or the terms of such agreements will be subject to binding arbitration. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association before a three member panel, each party appointing one such member and the two party-appointed members selecting the third member. The arbitration agreement shall be subject to enforcement, and the award of the panel shall be subject to confirmation, modification or vacatur in accordance with the Federal Arbitration Act, 9 U.S.C. § 1 et. seq., or, should the federal court determine that it lacks jurisdiction, in accordance with Article 75 of the New York Civil Practice Law and Rules.

X. CONTRIBUTION TO THE COUNTIES

A. The State and the Nation shall each contribute the sum of \$3 million annually to an economic development fund to be established by the State for the benefit of the Counties, such amount to be split equally between the Counties. Such payments shall commence no later than January 1, 2007 and the Nation and State shall make such payments for so long as the Nation continues operation of the Class III gaming facility referenced in Section VII of this Agreement.

(1) The State undertakes to hold the Counties harmless against any losses in real property taxes (based upon the assessed value at the time of acquisition by the Nation) resulting from removing Cayuga Treaty Land from the Counties' respective tax bases.

XI. MUTUAL RELEASE AND SATISFACTION OF ALL CLAIMS

A. The Parties mutually understand and agree that the benefits to be received under the Agreement, the Federal Settlement Legislation, and the State Settlement Legislation will constitute full and complete satisfaction of any and all claims, demands, actions, causes of action or liability of the Nation or any predecessor thereto, part thereof, or successor thereto arising from or relating to the transfer of land by the Cayugas, the Nation, the Tribe, or any predecessor thereto, part thereof, or successor thereto, or member thereof to the State, or the occupation, use or possession of any land so transferred, and all treaty-based, common law, and statutory land claims and rights of the Nation, or any predecessor thereto, part thereof, successor thereto, or members thereof to all or any portion of the Aboriginal Territory or Claim Area, or to any land or reservation within the State of New York, including, but not limited to, any such claims based on the Treaty of Canandaigua, and the Nation expressly releases and relinquishes any and all such claims.

B. The release of all claims by the Nation shall not affect the rights of the Nation as established by this Agreement, including the rights with respect to the Monticello Raceway Property set forth in this Agreement.

XII. JUDICIAL REVIEW

A. Any action brought by any Party arising from, relating to, or seeking to enforce this Agreement, or any of the terms therein, the Federal Settlement Legislation, or the State Settlement Legislation shall be brought in the United States District Court for the Northern District of New York, and the Parties expressly consent to the jurisdiction and venue in such court over such actions; provided, however, that solely in the event that the United States District Court for the Northern District of New York is without jurisdiction to adjudicate such action, the Parties expressly consent to have such action brought in the courts of the State of New York.

B. It is further understood and agreed that the Nation specifically and expressly waives its tribal sovereign immunity from suit and the State specifically and expressly waives its sovereign immunity, including its Eleventh Amendment immunity, from suit with respect to any action in federal court or state court arising from, relating to, or seeking to enforce this Agreement, or any of the terms therein, the Federal Settlement Legislation, or the State Settlement Legislation brought by any of the Parties to the extent necessary to allow any of the Parties to bring any action at law or in equity to enforce or interpret the terms and conditions of this Agreement, the Federal Settlement Legislation, or the State Settlement Legislation, including, without limitation, the right to obtain injunctive relief and/or monetary damages as determined by a court of competent jurisdiction.

C. The Parties hereby waive the defenses of exhaustion of administrative or tribal remedies with respect to any action in federal court arising from, relating to, or seeking to enforce this Agreement, or any of the terms therein, the Federal Settlement Legislation, or the State Settlement Legislation brought by either of the Parties.

XIII. GENERAL PROVISIONS

A. The Parties understand and agree that this Agreement is the result of a compromise between the Parties and shall not at any time or for any purpose be considered as an admission of liability or responsibility, nor shall the payment of money in consideration for the execution of this Agreement constitute or be construed as an admission of any liability whatsoever by any of the Parties.

B. Except as otherwise expressly provided in this Agreement, the Federal Settlement Legislation, or the State Settlement Legislation, nothing in this Agreement, Federal Settlement Legislation, or the State Settlement Legislation shall affect the extent to which all laws and

regulations of the United States of general applicability to Indians or Indian nations, tribes or bands of Indians shall be applicable to the Nation.

C. Nothing in this Agreement, the Federal Settlement Legislation, or the State Settlement Legislation shall affect the eligibility of the Nation or of any of its members for any federal program or the trust responsibility of the United States and its agencies to the Nation and its members.

D. It is the intent of the Parties that the funds established in Section V of this Agreement shall not be used as a basis for denying or reducing funds to the Nation or its members under any federal, state, or local program.

E. It is the intent of the Parties that none of the funds transferred pursuant to this Agreement, the Federal Settlement Legislation, or the State Settlement Legislation shall be deemed taxable by any federal, state or local governmental entity, nor shall such transfers be taxable events.

F. This Agreement may be executed and delivered in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. The Parties agree that an executed counterpart of this Agreement transmitted by facsimile shall be deemed to be an original. Any such counterpart signature page may be attached to the body of this Agreement to form one complete integrated whole.

[Signature page follows]

THE STATE OF NEW YORK

By: _____

Name: _____

Title: _____

Date: _____

THE CAYUGA INDIAN NATION OF NEW YORK

By: _____

Name: _____

Title: _____

Date: _____