JAMUL INDIAN VILLAGE

JAMUL INDIAN VILLAGE DEVELOPMENT CORPORATION RESOLUTION TO AMEND THE WORKERS' COMPENSATION ORDINANCE, TORT ORDINANCE, AND EMPLOYMENT DISCRIMINATION ORDINANCE

C.R. 2018-02

WHEREAS, the Jamul Indian Village Development Corporation ("<u>Corporation</u>") is a wholly owned enterprise of the Jamul Indian Village (the "<u>Tribe</u>"), established and governed by Ordinance No. 2016-37 (the "<u>Ordinance</u>"), which was unanimously approved by the General Council of the Tribe on July 19, 2017; and

WHEREAS, pursuant to Section 7(y) of the Ordinance, the Corporation has been delegated authority to amend ordinances as necessary to fulfill the Tribe's obligations under the Compact; and

WHEREAS, pursuant to Section 7(y) action by the Board to amend an ordinance requires written approval of the Tribal Council; and

WHEREAS, the Board adopted the First Amended Workers' Compensation Ordinance, Ordinance No. 2016-01 ("Workers Compensation Ordinance"); First Amended Tort Claims Ordinance, Ordinance No. 2016-02 ("Tort Ordinance"); and Employment Discrimination Complaint Ordinance for Casino Employees, Ordinance No. 2016-03 ("Employment Discrimination Ordinance") pursuant to the requirements of the Compact (as defined in the Ordinance)(collectively "Ordinances"); and

WHEREAS, the Corporation has been operating the Project (as defined in the Ordinance) as Hollywood Casino Jamul and as of May 28, 2018 will be transitioning the casino name to Jamul Casino; and

WHEREAS, the above referenced Ordinances refer to the Hollywood Casino Jamul and the Board wishes to remove such references to reflect to new name of the casino by adopting: (1) the Second Amended and Restated Workers Compensation Ordinance, attached hereto as Exhibit A, (2) the Second Amended and Restated Tort Claims Ordinance, attached hereto as Exhibit B, and (3) the Amended and Restated Employment Discrimination Complaint Ordinance for Casino Employees, attached hereto as Exhibit C.

NOW THEREFORE BE IT RESOLVED, that the Board hereby adopts the (1) Second Amended and Restated Workers Compensation Ordinance, (2) the Second Amended and Restated Tort Claims Ordinance, and (3) the Amended and Restated Employment Discrimination Complaint Ordinance for Casino Employees.

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BE IT FINALLY RESOLVED, the above references ordinances shall take effect immediately upon approval of this resolution.

The Board has executed this Corporate Resolution 2018-02 (AMEND AND RESTATE THE WORKERS' COMPENSATION ORDINANCE, TORT ORDINANCE, AND EMPLOYMENT DISCRIMINATION ORDINANCE) this 24th day of May, 2018.

Erica M. Pinto, Chairwoman

Michael Hunter, Vice Chairman

Teresa Cousins, Board Member

James Cuero III, Board Member

Celi Prito

Christopher Pinto, Board Member

Jesse Pinto, Sr., Board Member

Richard Tellow, Board Member

Exhibit A

Second Amended and Restated Workers Compensation Ordinance

[SEE ATTACHED]

JAMUL INDIAN VILLAGE

SECOND AMENDED WORKERS' COMPENSATION ORDINANCE

JIVDC Ordinance No. 2018-01

Section 1. Title. This Ordinance shall be entitled the "Jamul Casino Workers' Compensation Ordinance."

Section 2. Findings.

- (a) The success of the Gaming Operation relies on the trust and confidence of its employces.
- (b)The Casino endeavors to take all reasonable precautions to protect the health. safety and welfare of Casino employees.
- (c) The Casino possesses sovereign immunity from legal action and that, unless an immunity waiver is granted, Employees will be unable to prosecute Claims against the Casino for work-related injuries.
- (d) The Casino desires to create a process and remedy by which an Employee who is injured on the job may be fairly compensated; provided however, that no Claim exceeding the limits of applicable insurance, or those excluded in this Ordinance, may be asserted.
- Section 3. **<u>Purpose</u>**. The purpose of this Ordinance is to:
 - (a) Reaffirm the existing policies and procedures recognized by the Tribe concerning redress of employee work-related injuries illnesses, or conditions.
 - (b) Create and maintain a system for addressing workers' compensation Claims fairly and in general conformity with accepted workers' compensation practices of the Casino.
 - (c) Clearly define standards for compensability and establish available workers compensation benefits at levels comparable to those provided in the State of California.

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- (d) Establish a systemic and uniform procedure for the administration of workers' compensation benefits to employees, including employees of the Casino.
- (e) Establish that the State of California's statutory workers' compensation system shall not apply to any Employees, including persons employed in connection with Casino operations nor shall any claims for workers' compensation benefits be subject to the California workers' compensation laws, statutes, or regulations, or the Workers' Compensation Board of California, or to the jurisdiction of any other court of law or equity.
- (f) Meet the Tribe's obligations under the Compact and provide a limited waiver of the Casino's immunity as articulated in Section 18 of this Ordinance.
- (g) Ensure that the Ordinance is interpreted in a manner that conserves Tribal resources, thereby satisfying the purposes of Tribal gaming as articulated in 25 U.S.C. § 2702 (1).
- (h) To repeal and supersede all previous workers compensation ordinances enacted by the Tribe.

Section 4. <u>Scope</u>. This Ordinance shall apply to all Casino Employees who sustain injuries, illnesses, or other conditions arising out of and occurring in the course of employment at the Casino, regardless of whether those injuries are sustained on or off the Reservation, and to any Dependents who may be entitled to benefits or recovery under the terms of this Ordinance.

Section 5. <u>Exclusive Remedy and Procedure</u>. This Ordinance establishes the sole and exclusive remedy for, and the sole and exclusive method for obtaining compensation for any injuries, illnesses, conditions, or death arising out of and in the course of employment. The Casino's liability is limited to the compensation established in this Ordinance and shall not be expanded, broadened, enhanced, or otherwise increased except by express amendment of this Ordinance.

Section 6. Definitions.

- (a) "Administrator" shall mean the appointed agency(s) responsible for managing Claims under this Ordinance. Managing Claims includes the duties set forth in Section 9 below.
- (b) "Arise out of Employment" or "Arising out of Employment" means that an incident giving rise to occupational injury or illness must be causally related to the conditions and obligations of employment. Risks that are personal to the

"Claimant," for purposes of determining compensability, will not be construed toarise out of employment.

- (c) "Casino" means the Jamul Casino and/or any other casino owned and operated by the Tribe under a Tribal-State gaming compact with the State of California, any entity engaged by the Tribe to act as manager and/or agent of the Jamul Casino under a federally-approved management contract, and any of such manager's or agent's subsidiaries, affiliates, members, parents, entities, agencies, offices or branches.
- (d) "Child" or "Children" means the offspring of an "Employee, and shall also include an unborn child, a child legally adopted prior to the injury, a child toward whom the Employee stands in loco parentis, and a stepchild if such stepchild was, at the time of the injury, a member of the "Employee's" family and household, and substantially dependent upon the "Employee" for support. "Child" also includes any person deemed to be an Employee's child under Tribal custom as interpreted by the Tribal Council or its appointed representative.
- A "Child" will remain eligible for "Death Benefits" if and so long as:
 - (1) He or she is under the age of eighteen (18) at the time of a work-related Compensable Injury; or
 - (2) He or she is developmentally disabled and incapable of caring for him or herself and is totally dependent on the "Employee" for primary support and maintenance.
- (e) "Claim" means claim for workers' compensation benefits by a Casino Employee or Dependent under this Ordinance for a Compensable Injury.
- (f) "Claimant" means an Employee or qualified Dependent who, complying with the procedures established in this Ordinance, submits a Claim for workers' compensation benefits under this Ordinance, and who is determined to have sustained a Compensable Injury.
- (g) "Compensable Injury" means a specific (resulting from one incident or exposure) or cumulative (resulting from repetitive or continuous activity or exposure) injury, illness, or condition including damage to artificial limbs, dentures hearing aids, eyeglasses, and medical braces of all types (provided that such damage is incidental to an injury), where such injury, illness, or condition meets the standards set forth in Section 10 of this Ordinance. Where the primary injury,

illness, or condition meets the standards set forth in Section 10 of this Ordinance, consequential injuries alleged to be attributed to the Compensable Injury will be compensable only where there is objective medical evidence submitted by a physician or other medical professional approved by the Administrator which directly correlates such a consequence to the original injury, and where there is no intervening or superseding event.

- (h) "Course of Employment" means taking place within the period of employment, at a place where the Employee is reasonably expected to be under the terms of his or her employment, and while fulfilling his or her occupational duties or engaging in an activity incidental thereto. Injuries sustained in transit to or from work are not covered unless the journey itself is part of the service to the employer and there was no substantial deviation from that service.
- (i) "Benefit" means those benefits to which an Employee is entitled under Section 11 of this Ordinance.
- (j) "Days" mean calendar days unless otherwise specified.
- (k) "Death Benefits" shall mean funeral expenses and monetary compensation provided to a deceased Employee's Dependents where the Employee's death is the direct result of a Compensable Injury.
- (l) "Dependent(s)" shall mean the Spouse and/or Child or Children of the deceased Employee. Tribal custom may allow for the extension of dependency status to other family members if such family members were wholly dependent upon the deceased Employee at the time of death. Extending the status of Dependent to persons other than an Employee, Spouse or Child is within the Administrator's discretion, subject to approval by the Tribe.
- (m) "Employee" means a person employed by or in service of the Casino, under any contract of hire, express or implied, oral or written, under which such individual receives a salary or wages for work performed for the Casino. Employee shall not include any person who qualifies as an independent contractor, contractor, outside consultant, or volunteer.
- (n) "Tribal Council" means the elected governing body of the Tribe exercising authority pursuant to Article 9 Section 2 of the Constitution of the Jamul Indian Village.

- (o) "Idiopathic Injury" shall mean an injury to an Employee that arises spontaneously from an unknown or obscure etiology or cause, or a risk or injury that is peculiar to the Employee, the cause of which is precipitated not by an event that can be causally linked to employment specifically, but rather an activity of daily living.
- (p) "Independent Medical Examination" means an evaluation by a physician who is on the State of California list of approved Independent Medical Examiners or with Qualified Medical Examiner certification or equivalent qualifications, performed in order to determine causation, extent, medical status, work status, permanent and stationary status, level of impairment, entitlement to benefits, apportionment, or other similar attribute of an injury, illness, or condition. An Independent Medical Examination shall be conducted upon request of the Administrator at the expense of the entity employing the Employee in order to resolve a medical dispute.
- (q) "Permanent Partial Impairment" shall mean a level of permanent disability at the time a permanent and stationary status ("P&S") and/or maximum medical improvement ("MMI") is achieved, as opined by a treating physician or as the result of an Independent Medical Examination using the *AMA Guides to the Evaluation of Permanent Impairment*, 5th Edition, which results in a whole person impairment rating of less than seventy percent (70%).
- (r) "Permanent Total Impairment" shall mean a level of permanent disability at the time a P&S and/or MMI is achieved, as opined by a treating physician or as the result of an Independent Medical Examination using the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition, which results in a whole person impairment rating of seventy percent (70%) or higher. There shall be no presumptions of "Permanent Total Impairment" under this Ordinance.
- (s) "Psychiatric Injury" means a mental disorder diagnosed pursuant to the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, which is medically attributable to employment by a preponderance of evidence, and which resulted in its entirety from a specific, traumatic employment event.
- (t) "Reservation" means all those lands within the exterior boundaries of the Jamul Indian Village Indian Reservation in San Diego County, California, and such other lands as hereafter may be acquired by the Tribe or by the United States of America for the Tribe's benefit.

- (u) "Spouse" means the legally ordained husband or wife or domestic partner of the Employee, however a domestic partner will only be considered a Spouse under this Ordinance if, at the time of the Compensable Injury, the Employee and said domestic partner cohabitated and were registered with the California Secretary of State's Domestic Partners Registry.
- (v) "Temporary Partial Disability" means a non-permanent medical status that results in the Employce being able to perform modified or light work duties or reduced hours at the direction of or as opined by a physician approved by the Administrator, that results in diminished earnings when compared with the Employee's pre-injury average weekly wage.
- (w) "Temporary Total Disability" means a non-permanent medical status that results in the Employee being physically unable to perform any work at the direction of or as opined by a physician approved by the Administrator, that results in a complete loss of earnings.
- (x) "Tribal Court" is the Jamul Indian Village Tribal Court or any other entity explicitly designated by the Tribe to serve in that capacity for purposes of this Ordinance.
- (y) "Tribe" is the Jamul Indian Village of California, a federally recognized sovereign nation, including all incorporated and/or unincorporated Tribal governmental entities (including without limitation the General Council, Tribal Council, Gaming Commission, Jamul Indian Village Development Corporation) and their officials, officers, managers, agents and employees. For purposes of the definitions used in this Ordinance the term "Tribe" does not include the entities included in the definition of "Casino".
- (z) "Vocational Rehabilitation" shall mean the amount payable to a Claimant who sustains Permanent Partial Impairment as the result of a Compensable Injury, who does not receive a bona fide offer of permanent modified or alternative work from the Employer, to help compensate that Claimant for the anticipated costs of vocational retraining or rehabilitation in order to return to gainful employment.
- (aa) "Written Decision" shall mean any of the following, when reduced to writing and sent to a Claimant:
 - (1) The finding(s) and/or decision(s) of the Administrator to accept or deny, in full or in part, any aspect of a Claim hereunder; or

- (2) Determinations of entitlement by the Administrator of any available workers' compensation benefit; or
- (3) Decisions made by the Administrator to close the Claim; or
- (4) Any other finding, decision, or award rendered by the Casino relative to the workers' compensation Claim.

Section 7. <u>Reporting and Claim Obligations.</u>

- (a) An Employee must report any injury, illness, or condition that is actually or is thought to be potentially related to their employment, no matter how slight, to his or her supervisor immediately. Failure to adhere to this requirement could subject the Employee to disciplinary action and/or affect the viability of his or ber Claim.
- (b) If an Employee is incapacitated, another person may report the injury on the Employee's behalf, as soon as practicable.
- (c) Within 30 days of the injury, illness, or condition, the Employee must complete the requisite Claim forms. Claim forms can include, but are not limited to:
 - (1) An Employer s first report of injury;
 - (2) A signed statement from the Employee as to how the incident occurred and the specific body parts affected or illness or condition claimed;
 - (3) A medical authorization release and a list of past treating physicians; and/or
 - (4) An occupational injury questionnaire.
- (d) A supervisor that receives a report or notice of a work-related injury from an Employee, or on his or her behalf, must report the injury to the Casino's risk management department within twenty-four (24) hours of receipt, or the next business day in the event of office closure. A supervisor's failure to report an injury shall toll the statute of limitations defined in Section 8, provided that the Employee can demonstrate that the Employee properly reported the injury.
- (e) An Employee must cooperate using their best good-faith efforts with all requests for post-injury or post-accident drug screens in order to qualify as a Claimant eligible to receive workers' compensation Benefits.

(f) The Casino shall post and keep posted in a conspicuous location frequented by Employees, where the notice can be easily read during the workday, a notice which shall state the name and contact information of the Administrator. The notice shall advise employees of their obligations under this Section 7.

Section 8. <u>Statute of Limitations</u>.

- (a) <u>Filing a Claim</u>. A Claim for workers' compensation Benefits that is not filed by the Employee pursuant to Section 7 above within thirty (30) days of the incident or accident giving rise to the alleged Compensable Injury will be rejected absent extenuating circumstances. If the specific date of incident or accident cannot be determined, or in the case of cumulative injury or trauma, no Claim for workers' compensation benefits will be accepted if the Claim is not filed within thirty (30) days from the date that the Employee either knew, or in the exercise of reasonable diligence should have known, that the injury, illness, or condition was related to his or her employment.
- (b) <u>Appealing a Decision</u>. Should an Employee, Claimant, Dependent or any legal representative thereof disagree with any Written Decision of the Administrator, he or she may appeal that decision in writing within thirty (30) days of the date of the Administrator's correspondence, in a manner and form consistent with the requirements set forth in Section 13 below. Failure to submit an appeal within this timeframe will render the decision of the Administrator final and binding, with no further rights to appeal.
- (c) <u>Reopening a Claim</u>. Once a Claim bas been closed pursuant to Section 12 below, after one (1) year has passed from the last date of medical treatment, a Claim shall be presumed permanently closed with no opportunity to reopen it unless the Administrator should, in its discretion and with new additional, or previously undiscovered medical findings decide otherwise. A Claim that has been permanently closed will relieve the Casino of any and all further liability associated with that Claim, including any Medicare liens.

Section 9. <u>Claims Administrator Duties.</u>

(a) The Administrator shall act on behalf of the Casino in receiving, processing, and administering Workers' Compensation Claims, including payment of benefits under this Ordinance. The Administrator's responsibility to make determinations and decisions on the Casino's behalf shall include, without limitation, the following duties:

- (1) Conduct a thorough investigation of each Claim filed, and complete initial contacts with all relevant parties within seventy- two (72) hours of receipt of the Claim.
- (2) Until such time as a Claim is accepted or rejected pay up to \$10,000.00 in medical treatment for Claimant's alleged injury.
- (3)Determine whether to accept, deny, or further investigate a Claim and issue a Written Decision notifying the Employee of such determination within fourteen (14) days of receipt of the Claim. Where the Claim is accepted, the Administrator shall establish a reserve to reflect the Claim's anticipated exposure, with a detailed analysis of how the reserve was calculated, including an estimate of the benefits due and the duration and frequency of those benefits. Where the Claim is denied, the Administrator shall include the specific basis for denial, and provide information about the Claimant's rights under the Dispute Resolution Process in Section 13 below. Should the Administrator determine, within the specified period, that further investigation is required, the Administrator shall establish a detailed plan of action regarding the purpose of the investigation and what is sought to be discovered, and shall make best efforts to complete the investigation expeditiously, and under such circumstances shall make a final Written Decision outlining compensability within ninety (90) days from the date the Claim was filed. The Administrator may extend the time period for rendering a final Written Decision beyond 90 days when warranted under the circumstances, m the Administrator's sole discretion.
- (4) The Casino, through its Administrator shall retain full medical control over Claims for their duration. The Administrator shall determine the reasonableness and necessity of medical care and charges and shall determine whether and to what extent compensation is due under this Ordinance. The Administrator shall promptly approve or disapprove any referrals, procedures, surgeries, or other medical requests made by approved and authorized medical providers. Disapproval of such requests shall be based on sufficient justification, including but not limited to medical evidence to the contrary peer review, utilization review, surveillance video, and similar considerations.
- (5) The Administrator shall determine the eligibility and compensation rate payable for Temporary Total Disability, Temporary Permanent Disability, Permanent Partial Disability Permanent Total Disability, Vocational Rehabilitation, and/or Death Benefits. In the case of Death Benefits the

Administrator shall determine the eligibility of Dependents and the terms of any benefits payable. In the event of a need to allocate dependency benefits between Dependents living in different households the Administrator shall make the necessary allocation, based on the obligations, legal or otherwise, of the deceased Employee.

- (6) The Administrator shall, in accordance with the Administrator's agreement with the Casino, assist the Casino in pursuing any cause of action for, or defending any cause of action or Claim against, the Casino under this Ordinance.
- (b) The failure or alleged failure of the Administrator to perform any of the duties or responsibilities outlined above will not, as a matter of law or operation, create any cause of action for any third party, nor will the right to benefits or recovery of any Employee and/or Claimant be expanded or presumed in such an event. The Administrator, as an official of the Casino, is entitled to the Tribe's sovereign immunity from suit in state or federal courts or administrative agencies for his or her actions undertaken pursuant to this Ordinance.

Section 10. Compensability; Exclusions.

- (a) In order for a Claimant to receive any benefits for workers' compensation under this Ordinance, the Claimant must demonstrate by a preponderance of evidence that he or she sustained a Compensable Injury.
- (b) A Claim for a Compensable Injury must be initiated by reporting the injury and filing a Claim pursuant to Sections 7 and 8 above.
- (c) A Compensable Injury must both Arise out of Employment and occur within the Course of Employment. An injury that does not meet these and any other applicable requirements is not a Compensable Injury.
- (d) Upon occurrence of any of the following a Claim will be rejected, payment of any workers' compensation Benefits will be discontinued, and/or any incident or accident will not qualify as a Compensable Injury, as appropriate:
 - (1) The Employee fails to adhere to the reporting requirements, filing requirements or statute of limitations established under Sections 7 or 8 of this Ordinance;

- (2) The injury is caused by intoxication, alcohol, illegal drugs, or the unlawful use of any other controlled substance;
- (3) The injury is either intentionally self-inflicted, or an Employee unreasonably refused to obey written or verbal instructions which, if obeyed, would have reasonably prevented or significantly reduced the likelihood of injury or death;
- (4) Suicide;
- (5) The injury results from an altercation in which the injured Employee was the initial aggressor, whether or not those injuries are caused by a third person or fellow Employee;
- (6) The injury is caused by or during the commission by the injured Employee of any crime, including any misdemeanor or felony;
- (7) The injury arises out of voluntary participation in any off-duty recreational, social, athletic, or other activity that is not part of the Employee's usual and customary employment-related duties;
- (8) The Claim is filed after notice of suspension, termination or layoff, and it is determined by the Administrator that the filing of the Claim was retaliatory in nature;
- (9) The injury is deemed by the Administrator to have been an Idiopathic Injury;
- (10) The injury results from participation in an activity deemed to have been horseplay;
- (11) At the time of injury, an Employee refuses or fails to utilize or wear personal protective equipment or other safety apparatus that is considered a prerequisite of the job where such refusal or failure would be admonished or not permitted by the Casino if it were discovered, and the injury is caused by such a refusal or failure to wear or use that personal protective equipment or other safety apparatus;
- (12) The iujury qualifies as a Psychiatric Injury as defined in this ordinance, or any other purely emotional or mental injuries, except:

- (a) Where such injury is the direct result of a sudden and extraordinary employment event; or
- (b) Where such injury is the direct result of a severe, extreme, or abnormal Compensable Injury, as determined by a medical provider authorized by the Administrator;
- (13) The injury results from or is attributable to second-hand smoke, which is considered an inherent risk of employment, which an Employee assumes by accepting a position with the Casino;
- (14) The Employee refuses to cooperate or fails to use his or her good faith best efforts in cooperating in the investigation of the Claim, thus impeding the Administrator's right to discovery;
- (15) The Employee, without good cause shown, fails to present or appear for a scheduled Independent Medical Examination, and the Employee received sufficient prior notice of the appointment;
- (16) Compensability is based on misrepresentation or willful omission of a material fact which, if known to the Administrator or Casino would have resulted in denial of the Claim or provision of workers' compensation benefits at lesser levels than what was actually paid in reliance upon the misrepresentation or willful omission;
- (17) The injury is determined to have been a flare-up or exacerbation of a preexisting injury, illness or condition where no aggravation or worsening of symptoms are attributable to employment or where work merely served as the stage for the incident to occur without specific industrial causation;
- (18) Cumulative injuries where the Employee has been employed for less than six consecutive months; or
- (19) Injury occurring while an Employee travels to or from work, unless such travel is in connection with the performance of employment duties.

Section 11. <u>Workers' Compensation Benefits</u>. Benefits payable to any Claimant under this Ordinance shall be comparable to those mandated for comparable claimants under California state law, including quality and timely medical treatment consistent with the policies, purposes and provisions of this Ordinance; provided, however, that nothing herein is intended to be, nor shall be construed as, an express agreement to be subject to any provision of California state law.

This provision does not waive the Tribe's or Casino's sovereign immunity or the immunity of any of their entities, agencies, offices or branches. Benefits under this Ordinance shall include the following:

- (1) Medical Benefits.
 - (i) A Claimant found to have a Compensable Injury in conformance with this Ordinance and entitled to benefits hereunder shall be entitled to all medical, surgical hospital, or dental treatment and any therapy, durable medical equipment, medications, diagnostic testing, radiology, and any other medical service related thereto, as requested or prescribed by a provider selected by Claimant or, if a medical provider network is established by the Casino, then within the medical provider network.
 - (ii) The Administrator on behalf of the Casino shall retain medical control for the life of the Claim, as set forth in Section 9, subject to the following:

<u>Life-threatening</u>, <u>Serious</u>, or <u>Severe Injury</u>. Where an Employee has sustained a serious or severe injury which requires immediate emergency medical attention, the Employee should go to the nearest emergency room or urgent care facility. All subsequent treatment is subject to the medical control of the Casino through its Administrator and/or preferred vendor medical facility.

<u>Minor Injury</u>. Where an Employee has sustained a minor Injury the Employee shall be directed to go to a health care provider designated by the Casino's risk management department. The designated health care provider shall determine the Employee's initial treatment. If an Employee elects not to go the designated health care provider, the Casino shall not be financially responsible for any further medical treatment, including any treatment performed by any other health care provider.

(iii) Where deemed appropriate by an authorized and approved medical provider, when a condition reaches MMI and/or P&S, and future and/or supportive medical benefits are necessary, such benefits shall be provided for the duration established in the medical service provider's report, subject to the requirements set forth in Sections 8 and 12 of this Ordinance.

- (iv) The algorithms and treatment recommendations prescribed by the American College of Occupational and Environmental Medicine (ACOEM) guidelines may be used to determine the appropriateness of a recommended treatment, but shall have no binding effect upon the Administrator or Casino.
- (v) Neither the Casino nor the Administrator shall be responsible for, nor shall any Claimant be entitled to compensation for, any bill or amount in excess of what is allowable under the California fee schedule for similar bills in the California statutory system.
- (2) <u>Temporary Disability Benefits</u>.
 - (i) The Casino has established a return-to-work program, such that best efforts will be made to accommodate recommendations for light duty, modified work duty, or alternate duty as prescribed by an approved physician.
 - (ii) In instances where light duty, modified duty, or alternate duty results in diminished wages as compared to the pre-injury average weekly wage of the Claimant, the Claimant will be entitled to Temporary Partial Disability payments at a rate of sixty-six and two-thirds percent (66 and 2/3%) of the difference between actual weekly earnings during the period of modified and/or light duty and the pre-injury average weekly wage, at levels generally comparable to the California statutory system.
 - (iii) In instances where light duty or modified duty cannot be accommodated by the Casino, or where a Claimant is deemed temporarily totally disabled by an authorized and approved physician the Claimant will be entitled to Temporary Total Disability benefits at a rate of sixty-six and two-thirds percent (66 and 2/3%) of the pre-injury average weekly wage, subject to the maximum rates generally recognized by the State of California at the time such Temporary Total Disability is applicable. Temporary Total Disability benefits shall not be paid during the first three (3) days of lost earnings unless a Claimant is hospitalized, or is eligible for Temporary Total Disability benefits for fourteen (14) days or more. The maximum duration that Temporary Total Disability benefits will be paid by the Casino or its Administrator is one-hundred and four (104) weeks.
 - (iv) No Temporary Disability Benefits, whether Temporary Partial Disability or Temporary Total Disability, shall be paid where:

- (aa) The Claimant is incarcerated, provided that such payments will only be withheld during the period of said incarceration;
- (bb) The Claimant does not have authorization from the approved medical provider to be off work;
- (cc) The Claimant is terminated for misconduct, or quits work, or declines a bona fide offer of light or modified duties by the Casino where such a bona fide offer is for work within the physical limitations prescribed by the approved physician; or
- (dd) The Claimant receives wages from any source during a period where the Claimant was opined to have been temporarily totally disabled.
- (v) For purposes of this section, a Claimant's pre-injury average weekly wage shall be calculated by adding all reported earnings for one year preceding the date of injury, and dividing the resulting amount by fifty-two (52). In the event the Claimant has been employed for less than a year, the preinjury average weekly wage shall be calculated by adding all reported carnings for the actual period worked prior to the date of injury, and dividing the resulting amount by the number of applicable weeks worked. In the event the Claimant has worked for less than a week, the pre-injury avcrage weekly wage will be calculated by multiplying the Claimant s hourly rate by the number of hours he or she is expected to or was hired to work.

(3) <u>Permanent Impairment Benefits</u>.

- (i) Permanent Partial Impairment benefits will be paid pursuant to the schedule of benefits recognized for similar injuries under comparable California workers' compensation law.
- (ii) Permanent Total Impairment benefits will be paid to a Claimant for life or until a settlement is reached but shall not inure to any Dependent upon death of the injured Claimant.
- (iii) The Casino shall not be responsible for any portion of Permanent Partial Impairment or Permanent Total Impairment that is attributable to a condition, disease, illness or injury that is deemed pre-existing or nonindustrial in nature.

- (iv) In no event shall Permanent Partial Impairment for any and all injuries combined exceed an aggregate total of 100%.
- (v) No Permanent Impairment Benefits, whether Permanent Partial Impairment or Permanent Total Impairment shall be paid under circumstances where the Claimant is incarcerated, provided that such payments will only be withheld during the period of said incarceration.

(4) Vocational Rehabilitation.

- (i) Vocational Rehabilitation benefits shall be included as an extra percentage of Permanent Partial Impairment and shall be consistent with, and paid in an amount comparable to, similar benefits as established in the California workers compensation law in effect at the time the benefit is awarded. This henefit is awarded where the Employer is either unable to accommodate the permanent modified duties prescribed by the physician authorized by the Administrator at the time MMI is opined, or would not have been able to accommodate had the Employee still been employed at the time MMI was reached.
- (ii) Where the Administrator permits, in lieu of paragraph 4(i) above, Vocational Rehabilitation benefits may be paid in the form of a voucher paid directly to a Claimant.
- (iii) However, if a Claimant's permanent impairment rating equals 100%, the Claimant will be considered permanently and totally disabled, and therefore ineligible for Vocational Rehabilitation.
- (5) <u>Death Benefits</u>.
 - (i) Death Benefits are only payable to Dependents of the deceased Claimant as determined by the Administrator.
 - (ii) Death Benefits will be paid at levels generally comparable to those provided to similar dependents under California law.
 - (iii) Death Benefits can either be issued on a bi-weekly basis, at a rate commensurate to what would have been paid under Temporary Total Disability benefits but for the death, or can be paid in a lump sum at a reasonable present day value calculation as determined by the Administrator and subject to the acquiescence of the Dependents.

(iv) Death benefits will cease upon remarriage or death of the Spouse or upon the Child or Children reaching the age of 18.

Section 12. <u>Claim Closure</u>. A Claim shall be closed when any of the following circumstances occur:

- (a) The Administrator has paid a settlement to the Claimant that has been agreed upon by both the Claimant and the Administrator in exchange for a general release of any and all further liability;
- (b) The Administrator has extended all workers' compensation Benefits due under this Ordinance to any Claimant or Dependents;
- (c) The Employee or Dependent fails to appeal a Written Decision denying benefits within the time-frame prescribed in Section 13 below;
- (d) The Claimant has either unreasonably failed to follow-up with medical treatment, or has abandoned medical treatment as evidenced by failure to present for two consecutive medical appointments without good cause shown, or, with respect to supportive medical care, fails to treat within one year from the last date of authorized medical care under his or her Claim;
- (e) The Claimant has reached the point where no further material improvement would reasonably be expected from medical treatment as determined by the approved physician, where all other benefits have been exhausted and/or otherwise paid;
- (f) Discovery of any circumstance impacting compensability or continuing benefits as more fully described in Section 10 above
- (g) Pursuant to an order following a hearing under Section 11; or
- (h) Any other reason set forth in this Ordinance as determined by the Administrator.

Nothing in this Ordinance shall impair the rights of the Claimant or Casino to compromise any liability that is claimed to exist under this Ordinance on account of injury, disease or death, subject to the provisions herein. No compromise and release settlement shall be paid without a general release signed by both parties.

Section 13. Dispute Resolution.

- (a) <u>Step One: Informal Process</u>. In the event of any disagreement or dispute arising from a Written Decision, a Claimant or Dependent must request a review of such Written Decision at the Administrator level subject to the following requirements:
 - (1) Written appeals must be submitted to the Administrator within thirty (30) days of the Written Decision. Failure to timely file a written appeal shall render the Written Decision final and binding, and shall constitute a waiver to any subsequent appeals or dispute resolution processes set forth under this Ordinance.
 - (2) Upon receipt of a timely written appeal, the Administrator shall respond within ninety (90) days in writing via certified mail or email as to whether the Written Decision being appealed shall be upheld, amended, or overturned and the justification for same. If the Administrator does not respond within 90 days, the Written Decision shall be deemed upheld by the Administrator and an aggrieved Employee, Claimant or Dependent may proceed to Step Two below.
 - (3) Where Step One appeals are based on a dispute regarding medical evidence, an Independent Medical Examination shall be allowed provided however that no prior Independent Medical Examination bad previously taken place in review of the Claim in question, and further provided that a failure by an Employee or Claimant to submit to such an examination will render the Administrator's Written Decision final and binding.
- (b) Step Two: Final Arbitration. If an Employee or Dependent or Claimant exhausts Step One above and continues to disagree with recommendation of the Administrator, or if the Administrator fails to respond to a timely request within ninety (90) days final arbitration may be requested. Such a request must be made in writing, stating with specificity all grounds supporting the request, including without limitation, all documents, witness statements and other evidence Claimant intends to use to support the Claim at arbitration, within thirty (30) days of the Administrator response under Step One above, or thirty (30) days from the ninetyfirst (91st) day should the Administrator fail to respond within 90 days of the submission of a request for review where a timely written request has been made. Failure to make a timely written request for arbitration under this section for any reason, and/or failure to include all supporting evidence, will forever bar further appellate remedy under Step Two and will render the Administrator's Written Decision final and binding. Where a timely request for arbitration is made

pursuant to this section, an independent arbitrator appointed by the Casino shall be selected, and an arbitration shall be scheduled within sixty (60) days of the request. The arbitrator shall:

- (1) Be bound by this Ordinance, and any other Tribal laws, civil procedures, regulations, and practices, but may at his or her discretion look to California law or other workers' compensation law as a non-binding source of reference or information. The arbitrator shall not have jurisdiction to issue any awards for damages other than those specifically and explicitly available under Section 11. This limitation on the arbitrator's jurisdiction deprives the arbitrator of jurisdiction to award, among other remedies, punitive damages, treble damages, fines or penalties, attorneys' fees, costs, and equitable relief.
- (2) Take all action necessary to ensure an equitable, orderly, and expeditious review.
- (3) Regulate all aspects of the arbitration including but uot limited to applicable oaths and affirmations, admissibility of evidence, and admissibility of expert or lay witness testimony.

Any evidence that either party wishes to submit or have reviewed pursuant to or in consideration of the arbitration hearing must be submitted as true copies thereof to the opposing parties no later than fifteen (15) days prior to the date of the arbitration conference; provided, however, that the Claimant may not present evidence that was not included in his or her arbitration request, as provided in Section 13(b) above.

Both parties agree to abide by the arbitrator's findings. Except as specifically expressed herein, nothing shall be deemed or interpreted as a waiver of the Casino's sovereign immunity nor does the Casino consent to euforcement of this provision by any other court, forum, or venue, except as provided by this Ordinance. The Casino expressly waives its immunity from suit only as to participation in the Final Arbitration hearing described above, and to enforcement of an arbitrator's award in Tribal Court.

- (c) <u>Cost of Arbitration</u>. The parties shall bear their own costs, including attorney's fees, in the arbitration. Initially, The Casiuo shall pay the arbitrator's fees, but if the Casino is the prevailing party in arbitration, the arbitrator may award up to fifty percent of his or her fees and costs to the Casino
- (d) <u>Enforcement of Arbitration Award</u>. The Casino expressly waives its immunity from suit in Tribal court to enforce an award of compensation and/or workers'

compensation benefits by arbitration; provided, however, that the arbitrator and/or Tribal court shall have no authority or jurisdiction to order execution against any assets or revenues of the Casino except: (a) what is provided for under a valid policy of workers' compensation insurance, but only up to the available limit therein; (b) funds specifically set aside or designated by the Casino for payment of such compensation and/or workers compensation benefits ; or (c) any other proceeds of any applicable insurance policies. In no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Casino other than the limited assets of the Casino specified in this Subsection. This limited waiver of sovereign immunity applies only as to actions in Tribal court, and only as to the Casino.

Section 14. <u>Subrogation/ Recovery</u>.

- (a) Although the Casino is entitled to invoke the defense of sovereign immunity for any Claims brought against it, nothing herein shall impair the rights of the Casino, or the Administrator on its behalf, at the Casino's sole discretion, to file a subrogation lien in any action or to enter as a plaintiff to pursue any recovery to which the Casino may be entitled.
- (b) Whenever the Administrator pays any benefits as a result of clerical error, mistaken identity, innocent misrepresentation, or other mistake or similar circumstance that does not arise to the level of fraud or intentional omission or misrepresentation of a material fact, the Administrator shall request and the recipient of such benefits shall reimburse any monies expended within one year of discovering the error. The Administrator shall have the discretion to waive, in whole or in part, any refund or reimbursement from a recipient where recovery would be futile, against equity, against good conscience, or under other similar circumstances.
- (c) Whenever the Administrator has been fraudulently induced to make any benefit payment under this Ordinance, either by a willful omission of or intentional misrepresentation of a material fact, the recipient shall repay the payment, along with a penalty of fifty percent (50%) of the payment amount. The Administrator must demand the repayment within one (1) year of discovering the fraud.
- (d) For the purpose of settlement for Permanent Partial Impairment or Permanent Total Impairment the amount of benefits due may be reduced or denied in its entirety by the Administrator for pre-existing impairment, whether work related or not, if apportionment is medically documented by a physician or as the result of an Independent Medical Examination approved by the Administrator.

Section 15. Confidentiality.

- (a) The information in the Claims files and records of Employees or Claimants obtained pursuant to the filing of a Claim or any provisions of this Ordinance shall be deemed the exclusive property of the Casino, and therefore is strictly confidential and shall not be open to public inspection. A Claimant, or his or her authorized representative upon the presentation of the signed authorization of the Claimant, may review the Employee s medical file or receive copies of specific information therefrom.
- (b) The Casino may review any files of its injured Employees in connection with any pending Claims. Physicians treating or examining or giving medical advice to or providing an opinion about Employees claiming benefits under this Ordinance as approved or authorized by the Administrator may, at the discretion of the Administrator, inspect the Claims files and records of the injured Employee, and other persons may make such inspection at the Administrator's discretion when such persons are rendering assistance to the Administrator at any stage of the proceedings on any matter pertaining to administration of this Ordinance.
- (c) Notwithstanding the provisions herein, the Administrator and/or the Casino shall have the right to request full and complete medical records or reports from any of Employee's physicians or health care providers at any time and in the form and details as deemed necessary and shall have the right to present specific questions required to evaluate the Claim. All medical information and records shall be subject to disclosure to the Administrator and the Casino, in connection with any Claim for workers' compensation benefits in order to properly understand and evaluate the Claim. If the Employee asserts his or her privilege to keep such information or records from being disclosed to the Administrator or Casino, the Administrator or Casino may suspend any applicable workers' compensation Benefits, or can deny the Claim on the basis of violation of this Ordinance, including the Casino's and Administrator's rights to discovery hereunder, including without limitation, Section 10(d)(13).

Section 16. <u>Medicare Set Asides</u>. The Medicare/Medicaid SCHIP Extension Act (MMSEA) sets forth reporting requirements for insurers where criteria established pursuant to the Act have been met. The Tribe recognizes those requirements (*see, e.g. Section 7.1 of the NGHP User Guide*), and nothing herein shall prevent the Administrator from protecting Medicare's interests where required to do so. Where a Claimant is entitled to supportive medical care after maximum medical improvement is achieved pursuant to Section 11(b)(l)(iii) of this Ordinance, such supportive care will only be provided as specified by an approved physician and only for the duration specified by that approved physician. Where a Claim has been closed due to

abandonment, award, or settlement, neither the Casino, its insurers nor Administrator shall have any further obligation to pay benefits under this Ordinance, inclusive of any subsequent Medicare liens.

Section 17. <u>California Workers' Compensation Law and System Inapplicable</u>. The State of California's statutory workers' compensation system does not apply to the Casino or its Employees, nor shall any Claims for workers' compensation benefits be subject to the California workers' compensation laws, statutes, or regulations, or the Workers' Compensation Board of California, or to the jurisdiction of any other court of law or equity. Nothing herein constitutes, or may be interpreted as constituting, the Tribe's consent to California's workers' compensation laws.

Section 18. Sovercign Immunity. The Tribe hereby expressly provides this limited waiver of the Casino's sovereign immunity from (i) arbitration under Section 13(b) above, and (ii) actions to enforce arbitration awards under Section 13(b) filed with the Jamul Indian Village Tribal Court or any other entity explicitly designated by the Tribe to serve in that capacity for purposes of this Ordinance. Provided however that this limited waiver shall not apply to any action that does not satisfy the requirements of this Ordinance. In the event that a Claimant or any other person seeks any remedy not explicitly authorized by this Ordinance, this limited waiver and any other waiver contained in this Ordinance does not apply. This limited waiver shall not apply to any Claim that does not strictly comply with all provisions of this Ordinance. This limited waiver shall not apply to abandoned claims. This limited waiver shall apply only in the specific forums set forth herein and no other. This limited waiver shall not apply to any Casino or Tribal assets other than those specifically identified in this Ordinance. This limited waiver shall be strictly and narrowly construed. The Casino's sovereign immunity is not waived in any way with regard to any claim that does not meet the requirements of this Ordinance and nothing in this Ordinance shall be considered, construed, or interpreted as a waiver of Sovereign Immunity by the Tribe or any of the Tribe's entities, enterprises, offices, agencies, or branches (including, without limitation, the General Council, Tribal Council, Gaming Commission, Jamul Indian Village Development Corporation) other than the Casino.

Section 19. <u>Severability</u>. If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

Section 20. <u>Amendments</u>. This Ordinance may be amended in accordance with Tribal law.

Section 21. <u>Repeal of Prior Ordinances</u>. This Ordinance repeals and supersedes all previous workers' compensation ordinances enacted by the Tribe with respect to the Casino.

Section 22. <u>Effective Date</u>. This Ordinance, as amended, shall be effective as of upon approval by the Board. All previous ordinances permitting the filing of Claims against the

Casino or its officers, agents or employees for injuries to persons or property shall be repealed and of no further force and effect; provided that the provisions of this Ordinance, as amended, shall not apply to any Claim timely filed before effective date of this Ordinance, as amended, but all Claims arising or filed on or after the effective date of this Ordinance, as amended, shall be subject to the procedural and substantive provisions of this Ordinance, as amended.