

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,)
)
Plaintiff,)
)
v.)
)
(1) TIGER HOBIA, as Town King)
and member of the Kialegee Tribal)
Town Business Committee;)
(2) THOMAS GIVENS, as 1st)
Warrior and member of the Kialegee)
Tribal Town Business Committee;)
(3) JOHN DOE No. 1, as 2nd Warrior)
and member of the Kialegee Tribal)
Town Business Committee;)
(4) LYNELLE SHATSWELL, as Secretary)
and member of the Kialegee Tribal)
Town Business Committee;)
(5) JOHN DOE No. 2, as Treasurer)
and member of the Kialegee Tribal)
Town Business Committee;)
(6) JOHN DOE No. 3, as a member)
of the Kialegee Tribal Town Business)
Committee;)
(7) JOHN DOE No. 4, as a member)
of the Kialegee Tribal Town Business)
Committee;)
(8) JOHN DOE No. 5, as a member)
of the Kialegee Tribal Town Business)
Committee;)
(9) JOHN DOE No. 6, as a member)
of the Kialegee Tribal Town Business)
Committee;)
(10) JOHN DOE No. 7, as a member)
of the Kialegee Tribal Town Business)
Committee;)
(11) FLORENCE DEVELOPMENT)
PARTNERS, LLC, an Oklahoma limited)
liability company; and)
(12) KIALEGEE TRIBAL TOWN, a)
federally chartered corporation;)
)
Defendants.)

Case No. _____

**COMPLAINT FOR
DECLARATORY JUDGMENT,
AND PRELIMINARY
AND PERMANENT
INJUNCTIVE RELIEF**

For its Complaint, the Plaintiff, State of Oklahoma, states as follows:

Introduction

1. This action seeks declaratory and injunctive relief to prevent Defendants, Tiger Hobia, Town King, of the Kialegee Tribal Town, a federally recognized Indian tribe organized under Section 3 of the Oklahoma Indian Welfare Act, 25 U.S.C. § 503 (“OIWA”) (“Kialegee Tribal Town”), and the individual members of the Business Committee of the Kialegee Tribal Town, Kialegee Tribal Town, a federally chartered corporation organized under Section 3 of the OIWA (“Town Corporation”), and Florence Development Partners, LLC, an Oklahoma limited liability company (“Florence”), from proceeding with construction or operation of the proposed “Red Clay Casino,” in direct violation of both the April 12, 2011 Gaming Compact between Kialegee Tribal Town and the State of Oklahoma (“State Gaming Compact”) and the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721 (the “IGRA”). Defendants are actively engaged in the construction of and plan to operate the Red Clay Casino, a Class III gaming facility under the IGRA, on certain real property at the southwest corner of Olive Avenue (South 129th East Avenue) and Florence Street (South 111th Street East), in Broken Arrow, Oklahoma (“Broken Arrow Property”) that is held by two enrolled members of the Muscogee (Creek) Nation subject to federal restraints against alienation. Contrary to the requirements of both IGRA and the State Gaming Compact, the Kialegee Tribal Town has no possessory interest in the Broken Arrow Property, and the Kialegee Tribal Town neither has jurisdiction over nor exercises governmental powers over the Property. The Defendants’ on-going actions to inject gaming into the Broken Arrow community by constructing and placing in operation the proposed casino on the Broken Arrow Property

violate the federally enforceable Compact and federal law, and their conduct must be enjoined.

2. The Defendants' activities exceed the Kialegee Tribal Town's powers under federal law and violate federal law requirements including, among others, the requirement of the IGRA that gaming operations shall only occur on lands (i) "title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by the United States against alienation," (ii) over which an Indian tribe has jurisdiction, and (iii) over which that tribe exercises governmental power. 25 U.S.C. §§ 2703(4)(B), 2710(d)(1)(A)(i), 2710(d)(1)(c).

3. The Defendants' activities further exceed the Kialegee Tribal Town's powers under federal law and violate federal law requirements because the construction and management of a Class III casino on the Broken Arrow Property will violate the federally approved Gaming Compact between the Kialegee Tribal Town and the State of Oklahoma, which expressly limits the Kialegee Tribal Town to conducting gaming only on "its Indian lands," and the Kialegee Tribal Town has no possessory interest in the Broken Arrow Property.

4. This Court's equitable jurisdiction is invoked to prevent the Kialegee Tribal Town from undertaking activities to transform the character of the area surrounding the Broken Area Property when the Kialegee Tribal Town lacks any indicia that it can secure approval to operate a Class III gaming facility at the site and when any such effort is foreclosed under the State Gaming Compact and federal law. Unless the Defendants are enjoined from their continuing illegal activities, their actions will serve as a precedent that will fuel similar efforts throughout the State of Oklahoma to construct and operate

casinos on lands in which the compacting tribe has no possessory interest and that are neither within a compacting tribe's jurisdiction, nor over which the compacting tribe exercises governmental powers.

5. This Court should declare that the Defendants' efforts to construct and operate a Class III gaming facility on the Broken Arrow Property are unauthorized by the State Gaming Compact and federal law, and the Court should preliminarily and permanently enjoin the Defendants, and all those acting by, through or under them, from proceeding with development, construction, or operation of the proposed Class III gaming facility.

The Parties

6. The State of Oklahoma is a State of the United States of America possessing the sovereign powers and rights of a State with federally recognized and delegated authorities under the IGRA. As a party and federally required signatory to the State Gaming Compact that the Kialegee Tribal Town asserts authorizes it to operate a Class III gaming facility on the Broken Arrow Property, the State has a direct and substantial interest in ensuring full compliance with the terms of the Compact, and IGRA specifically authorizes the State to file this action in federal court. *See* 25 U.S.C. 25 U.S.C. § 2710(d)(7). The State has a further interest in protecting its citizens from unauthorized and inappropriate gaming operations by ensuring that the Kialegee Tribal Town's proposal does not serve as precedent for expanding casinos into areas where a tribe cannot satisfy the jurisdictional, governmental and land status requirements of the IGRA and the applicable Gaming Compact.

7. Kialegee Tribal Town is a federally recognized Indian tribe, organized under Section 3 of the OIWA, 25 U.S.C. § 503, with a Constitution and By-laws approved by

the Secretary of the Interior (“Secretary”) on April 14, 1941, and ratified by the Kialegee Tribal Town on June 12, 1941 (the “1941 Constitution”). The 1941 Constitution established the Kialegee Tribal Town Business Committee (“Committee”) as the Kialegee Tribal Town’s governing body.

8. Defendant Tiger Hobia is the Town King of the Kialegee Tribal Town, is a member of the Committee, and is a citizen and resident of the State of Oklahoma. Defendant Thomas Givens is the 1st Warrior, a member of the Committee, and a citizen and resident of the State of Oklahoma. Defendant John Doe No. 1 is the 2nd Warrior, a member of the Committee, and a citizen and resident of the State of Oklahoma. Defendant Lynelle Shatswell is Secretary of the Committee, and is a citizen and resident of the State of Oklahoma. Defendant John Doe No. 2 is the Treasurer of the Tribal Town, a member of the Committee, and a citizen and resident of the State of Oklahoma. Defendants John Doe Nos. 3 through 7 are members of the Committee, and are citizens and residents of the State of Oklahoma. Under Article 2 of the corporate charter of the Town Corporation, the “membership, the officers, and the management of the incorporated tribal town shall be as provided in the [Kialegee Tribal Town’s] Constitution and By-laws.” Defendants Tiger Hobia, Lynelle Shatswell, John Doe Nos. 1 through 7 are being sued in their capacities as members and officers of the Committee and of the Kialegee Tribal Town and the Town Corporation. Those Defendants’ actions exceed their authority under federal law and, therefore, those Defendants are not cloaked with any immunity from suit of the Kialegee Tribal Town or the Town Corporation. The Defendant members of the Committee are hereinafter referred to as the “Committee Defendants.”

9. Florence Development Partners, LLC is an Oklahoma limited liability company doing business in the State of Oklahoma.

10. Kialegee Tribal Town is a federally chartered corporation under Section 3 of the OIWA (the “Town Corporation”), doing business in the State of Oklahoma.

Jurisdiction

11. This Court has jurisdiction over this action under, 28 U.S.C. § 1331 and/or 25 U.S.C. § 2710(d)(7) to issue relief under 28 U.S.C. § 2201(a), among other sources.

12. This action arises under and requires the interpretation and construction of provisions of the Constitution and laws of the United States including, without limitation, the IGRA, that Act’s implementing regulations, 25 CFR §§ 501-572, and the federally approved Gaming Compact between the Kialegee Tribal Town and the State of Oklahoma.

13. A case of actual controversy exists between Oklahoma and the Defendants with respect to whether the Kialegee Tribal Town and its officials have authority under federal law to construct and operate a gaming facility on the Broken Arrow Property.

14. Any sovereign immunity from suit of the Kialegee Tribal Town or the Town Corporation is not a defense to this suit because the action is against the officers and Committee members of such entities sued in their official capacities, and Article 3(b) of the corporate charter of the Town Corporation provides that it has the power “to sue and be sued.”

15. Venue is proper in this Court under 28 U.S.C. § 1391(b) because the Broken Arrow Property is located in Tulsa County, Oklahoma, within this District.

16. Exhaustion of tribal remedies is neither necessary nor appropriate with respect to the claims this Complaint presents because the Kialegee Town Tribal Court plainly lacks subject matter jurisdiction over this controversy, and IGRA specifically authorizes the State to file this action in federal court. *See* 25 U.S.C. 25 U.S.C. § 2710(d)(7).

Factual Allegations Applicable to All Counts

The Kialegee Tribal Town

17. The Kialegee Tribal Town is a separate, independent federally recognized Indian tribe. The Kialegee Tribal Town first received federal recognition as a tribe in 1936. Upon information and belief, Kialegee Tribal Town has an enrolled membership of less than 500.

18. Kialegee Tribal Town is headquartered in Wetumka, Oklahoma. Kialegee Tribal Town does not have a reservation and has characterized itself as a “landless tribe.”

19. In 1941, pursuant to the OIWA, the Kialegee Tribal Town adopted the 1941 Constitution. Article IV, Section 1 of the 1941 Constitution provides that the “supreme governing body of the Town shall be the adult members of the Town, both male and female who are 21 years of age or older, through the actions of the Business Committee.” Article IV, Section 2 of the 1941 Constitution, in turn, declares that the “Business Committee of the Town shall consist of the elected officers and all members of the Advisory Committee.”

20. Under Article V of the 1941 Constitution, the officers of the Town are “the Town King, 1st Warrior, 2nd Warrior, Secretary and the Treasurer.” Article VI, Section 2 of the 1941 Constitution provides that the elected officers shall “select and appoint five members to serve as an Advisory Committee. . . .”

21. On July 23, 1942, the United States Department of the Interior, Office of Indian Affairs issued a Corporate Charter to the Town Corporation pursuant to the OIWA (the “1942 Charter”). The 1942 Charter was ratified by the Kialegee Tribal Town on September 17, 1942. Section 2 of the 1942 Charter declares that “the membership, the officers, and the management of the incorporated tribal town shall be as provided in the . . . Constitution and By-laws.”

22. Section 3(b) of the 1942 Charter provides that, “subject to any restrictions contained in the Constitution and laws of the United States or in the Constitution and By-laws of the Tribal Town, and to the limitations of section 4 and 5 of this Charter,” the Town Corporation

shall have the following corporate powers as provided by section 3 of the Oklahoma Indian Welfare Act of June 26, 1936: . . . (b) To sue and be sued; to complain and defend in any courts; Provided, however, That the grant or exercise of such power shall not be deemed a consent by the Tribal Town or by the United States to the levy of any judgment, lien, or attachment upon the property of the Tribal Town other than income or chattels specially pledged or assigned.

The Indian Gaming Regulatory Act

23. In 1988, Congress passed the IGRA to establish a statutory basis for the operation and regulation of gaming by Indian tribes.

24. The IGRA divides gaming into three categories: Class I, Class II, and Class III. Class I gaming is defined as “social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations. 25 U.S.C. § 2703(6). Class II gaming is defined as

the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith) . . .

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo, and card games that (I) are explicitly authorized by the laws of the State, or (II) are not explicitly prohibited by the laws of the State and are played at any location in the State, but only if such card games are played in conformity with those laws and regulations (if any) of the State regarding hours or periods of operation of such card games or limitations on wagers or pot sizes in such card games.”

Id. § 2703(7)(A). The definition of Class II gaming specifically excludes “any banking card games, including baccarat, chemin de fer, or blackjack (21) or electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.” *Id.* §2703(7)(B). The IGRA defines Class III gaming as “all forms of gaming that are not class I or class II gaming.” *Id.* § 2703(8).

25. The IGRA directs that an Indian tribe may engage in Class III gaming under the IGRA only on “Indian lands” “pursuant to an ordinance adopted by the Indian Tribe having jurisdiction over such lands.” 25 U.S.C. § 2710(d) (1)(A)(i).

26. The IGRA defines “Indian lands” as:

- (A) All lands within the limits of any Indian reservation; and
- (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4); *see also* 25 C.F.R. § 502.12(b) (defining “Indian land.”).

27. The IGRA further mandates that Class III gaming may only be “conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State” 25 U.S.C. § 2710(d)(1)(C). Such a compact must be approved by the Secretary of the Interior or his or her designee. *Id.* §2710(d)(8).

28. In 2004, Oklahoma established a model tribal gaming compact that is essentially a “pre-approved” offer to federally recognized tribes in the State (“Model Compact”). If a tribe accepts the Model Compact, obtains approval by the Secretary of the Interior, and complies with the requirements of the Compact and the IGRA, the tribe can then operate gaming facilities on “its Indian lands,” Model Compact, Part 5(L), i.e., lands in which the tribe has a possessory interests and over which the tribe has jurisdiction and exercises governmental powers.

29. On April 12, 2011, the Kialegee Tribal Town accepted the model gaming compact with the State of Oklahoma (the “State Gaming Compact”). A true and correct copy of the State Gaming Compact is attached as Exhibit 8 to the State’s Brief in Support of Motion for Preliminary Injunction. The Secretary of the Interior approved the State Gaming Compact on July 8, 2011.

30. The State Gaming Compact only authorizes the operation of “covered games,” as defined in that Compact, by the Kialegee Tribal Town on “its Indian lands as defined by the Indian Gaming Regulatory Act, 25 U.S.C., Section 2703 (4).” *See* State Gaming Compact, Part 5(L).

The Site of the Proposed Gaming Facility

31. The property on which the Defendants are engaged in constructing and developing the Class III gaming facility is located at the southwest corner of Olive Avenue and Florence Place, in Broken Arrow, Oklahoma (the “Broken Arrow Property”) Upon information and belief, the Broken Arrow Property is and is more particularly described as follows:

The East 1245.3 feet of the North 1245.3 feet of the Northeast quarter of Section Thirty Two (32), Township Eighteen (18) North, Range Fourteen

(14) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, less and except one acre reserve as life Estate for Willis G. Burgess:

LESS AND EXCEPT

A STRIP, PIECE OR PARCEL OF LAND LYING IN PART OF THE Northeast Quarter (NE1/4) of Section 32, Township 18 North, Range 14 East of the Indian Base and Meridian, Tulsa County, Oklahoma. Said parcel of land being described as follows:

Beginning 726.22 feet south of the Northeast corner of said NE 1/4; THENCE South 01°13'28" East along the East Line of said NE ¼ a distance of 519.08 feet; THENCE South 88°38'08" West a distance of 65.00 feet; THENCE North 02°37'56" East a distance of 520.42 feet; THENCE North 88°46'32" East a distance of 30.00 feet to the POINT OF BEGINNING, containing 24,660 square feet or 0.57 acres, more or less.

AND

Beginning 793.14 feet West of the Northeast corner of said NE ¼; THENCE South 01°22'07" East a distance of 30.00 feet; THENCE South 01°23'59" East a distance 20.00 feet; THENCE South 85°29'21" West a distance of 453.05 feet; THENCE North 01°13'22" West a distance of 74.75 feet to a point on the North line of said NE ¼; THENCE North 88°37'08" East along the North line of said NE ¼ a distance of 452.16 feet to the POINT OF BEGINNING. Containing 28,211 square feet or 0.65 acres, more or less.

AND

Commencing at the Northeast corner of said NE ¼; THENCE South 01°13'28" East along the East line of said NE ¼ a distance of 1245.30 feet; THENCE South 88°37'05" West a distance of 440.04 feet to the POINT OF BEGINNING, THENCE continuing South 88°37'05" West a distance of 805.26 feet; THENCE North 01°13'28" West a distance of 423.92 feet; THENCE Southeasterly on the arc of a curve to the left, said curve having a radius of 2101.83 feet (said curve being sub-tended by a chord bearing South 51°32'54" East, and a chord length of 224.89 feet), an arc distance of 225.00 feet; THENCE South 60°18'28" East a distance of 455.51 feet; THENCE South 80°52'21" East a distance of 245.38 feet to the POINT OF BEGINNING. Containing 129,289 square feet or 2.97 acres, more or less.

32. The Broken Arrow Property is located across the street from the Broken Arrow

Campus of Tulsa Technology Center, a vocational and technology school operated by the Tulsa Tech School District No. 18, at 4000 W. Florence, Broken Arrow, OK 74011-1740, in close proximity to several residential subdivisions, and roughly one-half mile from the site of a proposed new elementary school and Pre-K center. Location of a Class III casino in such an area conflicts with and would adversely affect adjoining and nearby uses and is inappropriate in the proposed location.

33. Upon information and belief, the Broken Arrow Property is currently owned by Wynema Capps and Marcella Giles, as tenants in common, subject to federal restraints against alienation.

34. Upon information and belief, Wynema Capps is not an enrolled member of the Kialegee Tribal Town. Instead, Wynema Capps is an enrolled member of the Muscogee (Creek) Nation.

35. Upon information and belief, Marcella Giles is not an enrolled member of the Kialegee Tribal Town. Instead, Marcella Giles is an enrolled member of the Muscogee (Creek) Nation.

36. The Broken Arrow Property is more than 70 miles away from the Kialegee Tribal Town's Headquarters in Wetumka, Oklahoma.

37. Because the Kialegee Tribal Town does not have a "reservation," the Broken Arrow Property is not within the limits of an Indian reservation within the meaning of the IGRA. *See* 25 U.S.C. § 2703(4) (B).

38. The Broken Arrow Property is not held in trust by the United States for the benefit of the Kialegee Tribal Town.

39. The Broken Arrow Property is not held in trust by the United States for the benefit of an enrolled member of the Kialegee Tribal Town.

40. The Broken Arrow Property is not held by either the Kialegee Tribal Town or an enrolled member of the Kialegee Tribal Town subject to restriction by the United States against alienation.

41. The Kialegee Tribal Town does not have a possessory interest in the Broken Arrow Property; therefore, with respect to the Kialegee Tribal Town, the Property could not be “its Indian lands” within the meaning of the State Gaming Compact, even if allotted lands held by members of another tribe could be considered Indian lands of the Kialegee Tribal Town, which the State denies.

42. The Broken Arrow Property does not meet the definition of “Indian land” over which the Kialegee Tribal Town can conduct Class III gaming because it is not held by members of the Kialegee Tribal Town and the Kialegee Tribal Town it is not a tribe “having jurisdiction over such lands” as required by the IGRA, 25 U.S.C. § 2710(d)(A)(i).

43. Even if the Kialegee Tribal Town had jurisdiction over the Broken Arrow Property, which is denied, the Broken Arrow Property is not land over which the Kialegee Tribal Town exercises governmental power. Consequently, the Property is not “Indian lands,” as required by IGRA, 25 U.S.C. §2703(4)(A), nor is it, with respect to the Kialegee Tribal Town “its Indian lands,” as required by the State Gaming Compact, Part 5.L.

Kialegee Tribal Towns’ Ongoing Efforts to Establish the Red Clay Casino

44. Upon information and belief, in 2011, the Kialegee Tribal Town attempted to enter into a Prime Ground Lease with Wynema Capps and Marcella Giles covering the Broken Arrow Property. Wynema Capps and Marcella Giles filed a petition in Tulsa County District Court seeking approval of the proposed Prime Ground Lease to the Kialegee Tribal Town.

45. Upon information and belief, the Kialegee Tribal Town contemplated that, once the Prime Ground Lease was approved, the Kialegee Tribal Town would sublease the Broken Arrow Property to Golden Canyon Partners, LLC, which would then construct the proposed gaming facility and would sublease that facility to Kialegee Tribal Town to operate.

46. On August 17, 2011, the Tulsa District Court entered an Order refusing to approve the proposed Prime Ground Lease and the balance of the transaction contemplated thereby. A true and correct copy of that Order is attached as Exhibit 13 to the State's Brief in Support of Motion for Motion for Preliminary Injunction. In that Order, the court concluded that "an individual citizen cannot transfer government jurisdiction over his or her property by the terms of a lease."

47. Upon information and belief, prior to the Tulsa District Court's Order being entered, the Kialegee Tribal Town, Wynema Capps, and Marcella Giles restructured their proposed transaction in an effort to evade requirements for judicial or Secretary of the Interior approval of the proposed lease and development of the Broken Arrow Property as a Class III gaming facility.

48. Upon information and belief, in the fall of 2011, Wynema Capps and Marcella Giles entered into a lease of the Broken Arrow Property to Florence Development

Partners, LLC with an initial term of six years and eleven months. On information and belief, no lease has been entered into between the Kialegee Tribal Town and Capps and Giles, and the Kialegee Tribal Town has no possessory interest in the Broken Arrow Property.

49. Upon information and belief, the Town Corporation, Wynema Capps, Marcella Giles, and others, are members of Defendant Florence Development Partners, LLC.

50. Upon information and belief, the lease from Wynema Capps and Marcella Giles to Florence Development Partners, LLC has not been reviewed and approved by District Court for Tulsa County, Oklahoma, as required by the Act of August 4, 1947, 61 Stat. 731 (the “1947 Act”) or the Bureau of Indian Affairs as required by 25 U.S.C. § 415 and 25 C.F.R. §162.104(d).

51. Notwithstanding that (i) Capps and Giles are not members of the Kialegee Tribal Town, (ii) the purported lease of the Broken Arrow Property, on information and belief, grants no interest to the Kialegee Tribal Town and has not been approved by the District Court for Tulsa County or the Bureau of Indian Affairs, (iii) the Kialegee Tribal Town does not have jurisdiction over the Broken Arrow Property, and (iv) the Kialegee Tribal Town does not exercise governmental functions over the Broken Arrow Property, in late December, 2011 Defendants initiated (or caused the initiation of) significant grading and other site preparation and construction-related activities leading to the construction and ultimate operation of the Class III gaming facility on the Broken Arrow Property. That work is now proceeding at a rapid pace.

First Claim for Relief
(Declaratory Relief—Acts in Excess of Tribal Authority)

52. Oklahoma incorporates by reference Paragraphs Nos. 1 through 47 of this Complaint.

53. The Committee Defendants' actions exceed the authority which the Kialegee Tribal Town has or is capable of bestowing upon the individual Defendants under federal law.

54. Because the Kialegee Tribal Town does not have a reservation, under IGRA and the State Gaming Compact, it may only operate gaming operations on "its Indian lands," lands in which it has a possessory interest and over which the Kialegee Tribal Town has jurisdiction and over which it exercises governmental power.

55. The Kialegee Tribal Town, acting through the Committee Defendants, lack authority to develop, construct or operate a Class III gaming facility on the Broken Arrow Property because the Kialegee Tribal Town does not have jurisdiction over or exercise government power over the Broken Arrow Property.

56. A case of actual controversy exists between Oklahoma and the Committee Defendants concerning whether the Kialegee Tribal Town's efforts to construct and operate a Class III gaming facility on the Broken Arrow Property violate federal law and the Kialegee Compact.

57. Oklahoma is entitled to a declaratory judgment that the Committee Defendants lack authority under federal law and the federally approved State Gaming Compact to construct or operate a gaming facility on the Broken Arrow Property.

Second Claim for Relief

(Declaratory Relief—Violation of IGRA and State Gaming Compact)

58. Oklahoma incorporates by reference Paragraph Nos. 1 through 57 of this Complaint.

59. Pursuant to the IGRA, the Kialegee Tribal Town may only engage in gaming if the gaming occurs on “Indian lands” that are “within [the] tribe’s jurisdiction,” 25 U.S.C. §§ 2710(b) (1), (d) (1), and over which the Kialegee Tribal Town exercises governmental power. 25 U.S.C. § 2703(4) (B); 25 C.F.R. § 502.12(b).

60. Moreover, the IGRA mandates that Class III gaming may only be “conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State.” 25 U.S.C. § 2710(d) (1)(C). The State Gaming Compact only authorizes gaming operations, with respect to the Kialegee Tribal Town on “its Indian lands as defined by IGRA.” Kialegee Compact, Part 5.L.

61. The Broken Arrow Property is not “Indian land” for purposes of either IGRA or the State Gaming Compact.

62. The Broken Arrow Property is not land within the Kialegee Tribal Town’s jurisdiction and is not land over which the Kialegee Tribal Town exercises governmental power.

63. The Broken Arrow Property is not land in which the Kialegee Tribal Town has a property interest. The Kialegee Tribal Town does not have a reservation. The Broken Arrow Property is not held in trust for the Kialegee Tribal Town nor is it held by members of the Kialegee Tribal Town. A mere leasehold interest in land held by non-members of the Kialegee Tribal Town is insufficient to vest the Kialegee Tribal Town with an interest sufficient to render the Broken Arrow Property the Tribal Town’s land for purposes of the State Gaming Compact and IGRA.

64. Even if such a lease could be sufficient, which is denied, the purported lease of the Broken Arrow Property has not been approved by the District Court for Tulsa

County, Oklahoma as required by the Act of August 4, 1947, 61 Stat. 731 (the “1947 Act”) or by the Secretary of the Interior as required by 25 U.S.C. § 415. The lack of such required approval means that the Kialegee Tribal Town does not even have a current, valid possessory interest in the Broken Arrow Property. The Broken Arrow Property therefore is not “its [Kialegee Tribal Town’s] Indian lands” as required by Part 5(L) of the State Gaming Compact.

65. Moreover, even if the Secretary were to approve such lease, on information and belief it would only vest an interest in Florence Development Partners, LLC, not the Kialegee Tribal Town. Consequently, the Broken Arrow Property is not and cannot become “its [Kialegee Tribal Town’s] Indian lands” as required by Part 5(L) of the State Gaming Compact.

66. The Defendants’ efforts to construct or operate a Class III gaming facility on the Broken Arrow Property are in direct violation of the requirements of the IGRA and the State Gaming Compact.

67. A case of actual controversy exists between Oklahoma and the Defendants concerning the Kialegee Tribal Town’s efforts to construct and operate a Class III gaming facility on the Broken Arrow Property.

68. Oklahoma is entitled to a declaratory judgment that (i) the Broken Arrow Property is not land within the Kialegee Tribal Town’s jurisdiction and is not land over which the Kialegee Tribal Town exercises governmental power and (ii) the Defendants’ efforts to construct or operate a Class III gaming facility on the Broken Arrow Property is in direct violation of the requirements of the IGRA and the State Gaming Compact.

Third Claim for Relief
(Preliminary Injunction)

69. Oklahoma incorporates by reference Paragraph Nos. 1 through 68 of this Complaint.

70. Oklahoma will suffer irreparable injury for which there is no plain, speedy and adequate remedy at law in the event the construction and operation of the proposed Kialegee Tribal Town Class III gaming facility proceeds on the Broken Arrow Property.

71. Unless a preliminary injunction is issued, continued construction of the proposed Red Clay Casino adversely affect, and in fact transform, the surrounding area despite that the State Gaming Compact and federal law foreclose the possibility that the Kialegee Tribal Town will be authorized to operate a Class III gaming facility on such Property.

72. The Kialegee Tribal Town will not be prejudiced by an order restraining the continued construction and proposed operation of an illegal, unauthorized gaming facility, because it cannot demonstrate it has or will secure authorization to conduct Class III gaming at such site.

73. The public interest favors enjoining the construction of an illegal, unauthorized gaming facility.

Oklahoma has a substantial likelihood of success on the merits of its claims in this action because the proposed casino is not on Indian land over which the Kialegee Tribal Town has jurisdiction or over which it exercises governmental power.

Fourth Claim for Relief
(Preliminary and Permanent Injunctive Relief)

74. Oklahoma incorporates by reference Paragraph Nos. 1 through 74 of this Complaint.

75. The Kialegee Tribal Town will not be prejudiced by an injunction restraining the Defendants from proceeding with the construction or operation of the proposed Casino.

76. The public interest favors enjoining the Defendants.

77. Oklahoma has a substantial likelihood of success on the merits of its claims in this action.

WHEREFORE, Plaintiff, State of Oklahoma, respectfully requests that the Court:

1. Declare that the Defendants, acting on behalf of the Kialegee Tribal Town, lack authority under federal law to construct or operate a Class III gaming facility on the Broken Arrow Property;

2. Declare that (i) the Broken Arrow Property is not land within the Kialegee Tribal Town's jurisdiction and is not land over which the Kialegee Tribal Town exercises governmental power, and (ii) the Defendants' efforts to construct or operate a Class III gaming facility on the Broken Arrow Property are in direct violation of the requirements of the Indian Gaming Regulatory Act and the State Gaming Compact;

3. Enter a Preliminary Injunction enjoining the Defendants, or anyone acting by, through or under them, from taking any action to construct or operate a Class III gaming facility on the Broken Arrow Property during the pendency of this action;

4. Enter permanent injunctive relief permanently enjoining the Defendants, or anyone acting by, through or under them, from taking any action to construct or operate a Class III gaming facility on the Broken Arrow Property; and

5. Award the State of Oklahoma its costs incurred in this action and such other and further relief that the Court deems just and proper.

6.

OKLAHOMA OFFICE OF THE ATTORNEY GENERAL

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