

# **EXHIBIT I**



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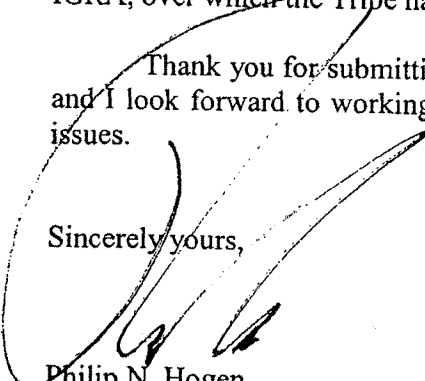
Ms. Elizabeth D. Kipp  
Director  
Auberry Big Sandy Rancheria  
P.O. Box 129  
Auberry, CA 93602

Dear Ms. Kipp:

This letter is in response to your request for the National Indian Gaming Commission (NIGC) to review and approve the May 2002, Big Sandy Rancheria Band of Western Pomo Indians (Tribe) Gaming Ordinance No. 02-01 and the Tribal Gaming Regulations approved by Resolution No. 0402-03 on May 1, 2002. This letter constitutes such approval under the Indian Gaming Regulatory Act (IGRA). It is important to note that the gaming ordinance is approved for gaming only on Indian lands, as defined in the IGRA, over which the Tribe has jurisdiction.

Thank you for submitting the ordinance for review and approval. The NIGC staff and I look forward to working with you and the Big Sandy Rancheria on future gaming issues.

Sincerely yours,



Philip N. Hogen  
Chairman

# **EXHIBIT J**

**BROWNSTONE LLC**  
**American Vantage Companies**  
**P. O. Box 81920 Las Vegas, Nevada 89180**  
**Telephone: (702) 227-9800 • Fax: (702) 227-8525**

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**CONFIDENTIAL**

January 16, 2007

Big Sandy Rancheria Band of Western Mono Indians  
37387 Auberry Mission Road  
Auberry, CA 93602  
Attention: Connie Lewis, Tribal Chairperson

Re: Memorandum of Understanding

Dear Chairperson Lewis:

This Memorandum of Understanding (the "*MOU*") confirms the intent and understanding of Brownstone LLC (the "*Developer*") and the Big Sandy Rancheria Tribe of Western Mono Indians (the "*Tribe*") in connection with a proposed development and financing agreement (the "*Development and Financing Agreement*") and consulting agreement (the "*Consulting Agreement*" and collectively with the Development and Financing Agreement, the "*Project Agreements*") for the Tribe's planned casino, gaming, hospitality and recreational project currently planned to be located on land held by Sherrill McCabe Esteves near Friant, California (the "*Project*"). The Tribe and the Developer are sometimes referred to herein individually as a "*Party*" and collectively as the "*Parties*."

**Matters in Principal**

No paragraph under this heading will be legally binding and enforceable against any Party.

1. *Proposed Transaction.* The Parties desire to enter into the Project Agreements to document the relationship between the Parties for the development, construction, opening, financing and on-going operation of the Project. The proposed terms of the Project Agreements are outlined in Exhibit A.
2. *Conditions to Execution of Project Agreements.* The execution of the Project Agreements is subject to the negotiation of terms and conditions satisfactory to each Party in its sole and absolute discretion.

**Binding Agreements**

Each paragraph under this heading (collectively, the "Binding Provisions") is a legally and enforceable agreement of the Parties.

1. *Exclusive Negotiations.* During the Term, the Tribe agrees, on behalf of itself and each of its instrumentalities, enterprises and affiliates, it will not, directly or indirectly, enter into any understandings, negotiations with, or solicit, initiate or encourage any inquiries, proposals or offers from, any person with respect to the development, construction, opening, financing or on-going operation of the Project or other gaming operations of the Tribe or its instrumentalities, other than the Developer.
2. *Advance.* Within one business day of the execution of this MOU, the Developer will pay to the Tribe \$40,000 (the "*Advance*"). The Advance shall constitute an advance of credit under the Credit Agreement referred to in Exhibit A attached hereto. If the Credit Agreement is never entered into, the Tribe shall repay the Advance to Developer, plus interest at the annual rate of 20%, compounded daily, at such time as it, or any of its instrumentalities, enterprises or affiliates enters into an agreement with any third party providing for the development or financing of a new casino or gaming project.
3. *Expenses.* In the event the Project Agreements are not executed, each Party will bear its own costs and expenses incurred in connection with executing and negotiating this Memorandum of Understanding and the Project Agreements, including all fees and expenses of such Party's attorneys, advisors, consultants and other representatives and agents.
4. *Termination.* The term of this Memorandum of Understanding will be for a period commencing on the date hereof and ending on the earlier of (a) execution of the Project Agreements, (b) 90 days from the date of the Memorandum of Understanding, or (c) such earlier time the Parties mutually agree (the "Term"). Upon the termination of this Memorandum of Understanding, no Party shall have any obligation or liability to the other Party whatsoever, except (i) as provided for in Paragraph 2 above, and (ii) no termination will relieve any Party for liability for any breach of the Binding Provisions prior to such termination and (iii) the Parties will remain bound by the provisions of Paragraphs 3 of this Section.

If the terms and conditions of this Memorandum of Understanding are acceptable, please indicate your acceptable of the terms set forth in this Memorandum of Understanding by signing

in the space provided below and on the enclosed copy and by returning the copy to us.

Very truly yours,

BROWNSTONE LLC

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

Accepted and Agreed:

BIG SANDY RANCHERIA BAND OF WESTERN MONO INDIANS

\_\_\_\_\_  
By: Connie Lewis  
Title: Tribal Chairperson

EXHIBIT A

PROPOSED TERMS OF DEVELOPMENT AGREEMENT

General	Provide for Developer to assist Tribe in development, financing, construction and operation of the Project.
Financing	<p>It is anticipated that the development, construction and equipping of the Project and providing for certain of the Tribe's interim working capital needs will require an aggregate financing of between \$300 million and \$325 million. In order to provide for the most efficient pricing, the financing is anticipated to be arranged in three phases: (i) an amount not to exceed \$500,000 (which may be increased as mutually agreed) of initial financing (the "<i>Initial Financing</i>") to fund pre-development activities and certain working capital requirements of the Tribe (including leasehold payments to Sherrill McCabe Esteves) through the time the Bridge Financing is arranged, (ii) approximately \$15-\$25 million of bridge financing (the "<i>Bridge Financing</i>") to fund pre-development activities through the time of the Permanent Financing and certain working capital requirements of the Tribe (including leasehold payments to Sherrill McCabe Esteves, monthly payments to support the activities of the Tribal government in an amount to be agreed and outstanding accounts payables of the Tribe to be agreed) and (iii) a bond financing (the "<i>Permanent Financing</i>") in an amount necessary to fund the construction, equipping and related costs of the Project. All of the costs and expenses incurred in the development, construction and equipping of the Project (including the Development Fee and Structuring Fee referred to below, travel and other out-of-pocket expenses incurred by the Developer ("<i>Reimbursable Expenses</i>," and fees and expenses of counsel, accountants, investment bankers and consultants) will be funded out of the Initial Financing, Bridge Financing and Permanent Financing and will be non-recourse to the Tribe).</p> <p>The Initial Financing will be provided by the Developer and/or an affiliate thereof pursuant to a separate credit agreement (the "<i>Credit Agreement</i>") to be executed as soon as practical following the execution of the MOU to which this Exhibit is attached. The Developer will use its commercially reasonable efforts to arrange for the Bridge Financing and the Permanent Financing. The Bridge Financing and Permanent Financing will be evidenced by debt instruments in form and substance acceptable to the lenders thereon and the Tribe. The borrower will be an instrumentality of the Tribe established to exclusively operate all gaming, hospitality and entertainment operations of the Tribe (other than the existing gaming operations of the Tribe). The Initial Financing, Bridge Financing and Permanent Financing shall be solely the obligation of such instrumentality or enterprise and shall be non-recourse to the Tribe or any of its other instrumentalities or business enterprises (except that, if the Project Agreements are not entered into prior to the expiration of this MOU, the Initial Financing will be recourse to the Tribe, but only out of any new casino or gaming operations operated by the Tribe or any of its instrumentalities).</p> <p>The Developer has made an initial advance of \$40,000 under the Credit Agreement in connection with the execution of the MOU. Additional advances shall be disbursed to the Tribe on a schedule as set forth in the Credit Agreement. The Initial Financing shall be repaid out of the net proceeds of the Bridge Financing (or, if no Development Agreement is entered into, the net proceeds of any financing arranged by the Tribe with respect to the development and construction of its casino) and shall bear an interest rate of 20% per annum, compounded daily, and shall be paid in one lump sum. The terms and conditions</p>

	<p>of the Bridge Financing and the Permanent Financing shall be on terms negotiated with the lenders on such facilities.</p> <p>Although the financing described herein is described as occurring in phases, the Developer's efforts to arrange for each phase of the financing will run concurrently with the goal of completing the Project on the most efficient and accelerated time schedule as is practical.</p>
<p><b>Pre-Construction Services Provided By Developer</b></p>	<ul style="list-style-type: none"> <li>• Arrange with third party financiers, investment banks or other sources, the Bridge Financing and Permanent Financing</li> <li>• Engage legal counsel to provide services in connection with the negotiation and execution of architectural, construction and financing agreements, and regulatory matters.</li> <li>• Make recommendations with respect to the structuring of the Project, including formation of appropriate Tribal enterprises if required.</li> <li>• Make recommendations with respect to regulatory matters related to Project, including obtaining NIGC, BIA or other governmental approvals and services in connection with compact negotiations with the State of California.</li> <li>• Make recommendations and negotiate contractual arrangements with architects, contractors, consultants and other professionals for development, construction and operation of the Project.</li> <li>• Prepare and submit appropriate project, construction and development budgets and provide regular updates for such budgets.</li> <li>• Procure vendors for furnishings and equipment for the Project.</li> <li>• Meet regularly with Tribal representatives to provide updates on status.</li> </ul>
<p><b>Pre-Opening Services Provided By Developer</b></p>	<ul style="list-style-type: none"> <li>• Recruit executive employees to manage and operate the Project.</li> <li>• Consulting with respect to staffing, training, marketing and other pre-opening activities.</li> <li>• Develop initial business plan for the Project.</li> <li>• Prepare capital, revenue, expense and cash flow budget for the Project.</li> <li>• Assist in the development and implementation of internal controls and a compliance program for gaming operations in compliance with applicable Tribal and federal laws and regulations.</li> <li>• Recommend and assist with the implementation of insurance policies in connection with the financing, development, construction, furnishing, equipment and opening of the Project.</li> </ul>
<p><b>No Authority to Contract</b></p>	<p>Developer shall have the authority to negotiate on behalf of the Tribe such agreements Developer determines as reasonably necessary or desirable to finance, develop, construct, furnish, equip and open the Project; <u>provided</u>, Developer shall not have the authority to execute any agreements on behalf of the Tribe. All determinations with respect to the Project and the terms of any such agreements will be subject to the approval and authorization of the appropriate tribal governmental bodies.</p>
<p><b>Development Fee; Structuring Fee; Reimbursable Expenses</b></p>	<p>For the services provided in connection with the Project, Developer shall be paid (i) a Development Fee equal to 6% of the aggregate costs of developing, constructing, equipping and opening the Project payable in accordance with the schedule below, (ii) a Structuring Fee equal to 2.5% of the gross amount of the Initial Financing, Bridge Financing and Permanent Financing, payable at the closings of such financings and all Reimbursable Expenses as incurred upon presentment of invoices therefor (the first of which will not be submitted prior to the closing of the Bridge Financing):</p> <p>The Development Fee will be paid in accordance with the following schedule:</p> <ul style="list-style-type: none"> <li>• \$500,000 shall be paid at the time of the closing of the Bridge Financing;</li> <li>• \$1,000,000 shall be paid at the time of the closing of the Permanent</li> </ul>



	<p>Financing and an additional \$100,000 (or such higher amount as is negotiated with the lenders on the Permanent Financing) payable quarterly thereafter; and</p> <ul style="list-style-type: none"> <li>• The remaining amount of the Fee upon the opening of the Project.</li> </ul> <p>In addition, the Developer shall be paid an additional \$2,500,000 if the opening of the Project occurs prior to June 30, 2009.</p>
<b>Term of Development and Financing Agreement</b>	<p>The term of the Development and Financing Agreement shall continue until the later to occur of (x) the Opening of the Project and (ii) such time as all amounts due and owing to Developer are paid thereunder. The Tribe may terminate the Development and Financing Arrangement if (a) the Bridge Financing is not obtained within 180 days from execution of the Development and Financing Agreement (which period will be extended an additional 90 days so long as the Developer is using diligent efforts in good faith to arrange financing), or (b) the Permanent Financing is not obtained within 180 days of the later to occur of (x) all regulatory approvals are obtained in order for the Tribe to obtain use of the land on which the Project is to be constructed under a long term lease and for the Tribe to commence construction of the Project, (y) all water, power and utility needs for the project are satisfied, (z) the Tribe enters into a new compact with the State of California providing for licenses to operate a minimum of 2,000 class III gaming machines at the Project and such other conditions as are set forth and agreed to as part of the Project Documents (which period will be extended an additional 90 days so long as the Developer is using diligent efforts in good faith to arrange financing).</p>
<b>Representations and Warranties and Covenants</b>	<p>The Development and Financing Agreement will contain customary and standard representations, warranties and covenants for comparable agreements.</p>
<b>Consulting Agreement</b>	<p>The Tribe will retain the Developer pursuant to a separate Consulting Agreement to provide consulting services with respect to the operations of the Project for a three year period (which may be extended as mutually agreed) following the opening for a fixed annual consulting fee to be agreed to as part of the definitive agreement plus negotiated bonuses in the event that the operating results of the Project exceed certain agreed upon thresholds.</p>
<b>Waiver of Sovereign Immunity</b>	<p>The Project Agreements will contain a mutually acceptable waiver of sovereign immunity.</p>

# **EXHIBIT K**

**EXECUTION COPY**

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DEVELOPMENT AGREEMENT

Dated as of March 25, 2007

among

BIG SANDY RANCHERICA BAND OF WESTERN MONO INDIANS  
("Tribe")

BIG SANDY ENTERTAINMENT AUTHORITY  
("Authority")

and

BROWNSTONE LLC  
("Developer")

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SCHEDULES

SCHEDULE 5.01(e) LITIGATION

## DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered into as of March 25, 2007, among the BIG SANDY RANCHERIA BAND OF WESTERN MONO INDIANS, a federally recognized Indian tribe (the "Tribe"), BIG SANDY ENTERTAINMENT AUTHORITY, an instrumentality of the Tribe (the "Authority") and BROWNSTONE LLC, a Nevada limited liability company (the "Developer"). Each of the Tribe and the Authority are sometimes referred to herein as a "Tribal Party" and collectively as the "Tribal Parties." Undefined capitalized terms used herein have the meaning given them in ARTICLE IX.

### PREAMBLES

- A. The Tribal Parties desire to develop, finance, construct and operate a second casino and related facility of the Tribe (the first facility being the Mono Wind Casino), currently intended to be an approximately 185,000 square foot Class II and Class III casino to be located near Friant, California on lands eligible for gaming under the IGRA and which will include slot machines, table games, food and beverage outlets as well as hospitality and recreational areas. (the "Project"), which it intends to be built and located on a tract of land held by Sherrill McCabe Esteves near Friant, California (the "Project Site").
- B. The Tribal Parties recognize and acknowledge they do not have experience with the development, financing and construction of a gaming operation of the size and scope of that contemplated as the Project and seeks assistance, advice, training and other services from Developer in connection with the development, financing, construction and operation of the Project.
- C. The Tribal Parties desire to retain Developer to provide the development services described herein in connection with the development, financing and construction of the Project.

The parties hereto agree as follows:

### ARTICLE I.

#### ENGAGEMENT AND ACCEPTANCE

SECTION 1.01. Engagement and Acceptance. Subject to the terms and conditions hereof, the Tribal Parties engage Developer to provide the services herein described with respect to the development, financing, construction, equipping, and furnishing of the Project, and Developer hereby accepts such engagement.

SECTION 1.02. Exclusivity. The Tribal Parties shall deal exclusively with and through Developer with regard to the development, financing or construction of the Project. The Developer shall not play any role in developing, financing or constructing any tribal gaming facility within seventy-five (75) miles of the Project.

ARTICLE II.

SERVICES

SECTION 2.01. Services. Subject to the terms and conditions of this Agreement, the Developer will provide the Tribal Parties the following services:

- (a) Assist in arranging with third party financiers, investment banks or other sources the Bridge Financing and the Permanent Financing;
- (b) Assist with respect to the structuring of the Project, including the formation of appropriate Tribal enterprises, if required;
- (c) Make recommendations with respect to regulatory matters related to the Project, including with respect to obtaining NIGC, BIA or other government approvals and services in connection with compact negotiations with the State of California;
- (d) Make recommendations and negotiate contractual arrangements with architects, contractors, consultants and other professionals for the development, construction and operation of the Project;
- (e) Prepare and submit appropriate project, construction and development budgets, and provide regular updates for such budgets;
- (f) Assist with arranging the selection and procurement of vendors for furnishings and equipment for the Project;
- (g) Meet regularly (and unless may be otherwise agreed, no less than once a week) with Tribal representatives to provide updates on status of the Project, including, but not limited to the status of the negotiations of any material agreements;
- (h) Consult with respect to recruiting and staffing (including executive employees), training, marketing and other pre-opening activities;
- (i) Develop an initial business plan for the Project;
- (j) Prepare capital, revenue, expense and cash flow budgets and forecasts for the Project; and
- (k) Recommend and assist with the implementation of insurance policies in connection with the financing, development, construction, furnishing, equipment and opening of the Project.

ARTICLE III.

NO AUTHORITY TO CONTRACT

SECTION 3.01. Negotiation of Agreements. As part of the services to be rendered by Developer pursuant to ARTICLE II, Developer shall have the authority to negotiate on behalf of the Tribal Parties such agreements that Developer determines as being reasonably necessary or desirable to finance, develop, construct, furnish and equip the Project with such Persons selected and approved by the Developer.

SECTION 3.02. Retention of Professionals. Developer shall have the authority to engage legal counsel, accountants, investment bankers and consultants as it determines to be necessary or appropriate in rendering the services provided for herein, including in connection with the negotiation and execution of architectural, construction and financing agreements (including those related to the Bridge Financing and Permanent Financing), as well as in connection with regulatory matters related to the Project.

SECTION 3.03. No Authority to Contract. Notwithstanding anything to the contrary contained in this Agreement, Developer shall not have the authority to execute any agreements on behalf of the Tribal Parties. All determinations with respect to the Project and the terms of any such agreements negotiated by Developer will be subject to the approval and authorization of the appropriate Tribal governmental bodies and/or officials.

ARTICLE IV.

FEES AND EXPENSES

SECTION 4.01. Fees and Expenses. In consideration of the services to be performed by Developer under this Agreement, the Tribal Parties shall be obligated, jointly and severally, to pay to Developer the following fees:

(a) a "Development Fee" equal to six percent (6.0%) of the Project Costs of the Project due and payable as follows: (i) Five Hundred Thousand Dollars (\$500,000) at the closing of the Bridge Financing; (ii) One Million Dollars (\$1,000,000) at the closing of the Permanent Financing; (iii) One Hundred Thousand Dollars (\$100,000) (or such higher amount as is negotiated with the lenders of the Permanent Financing) on the first day of each calendar quarter beginning the first calendar quarter after the closing of the Permanent Financing and ending on the Project Opening Date; and (iv) all remaining amounts on the Project Opening Date. The Tribal Parties agree that the Permanent Financing shall provide customary provisions to assure the deposit, escrow and timely payment from the Permanent Financing of all estimated unpaid Development Fees referred to in SECTIONS 4.01(a)(iii) and (iv) through the Project Opening Date. r

(b) a "Structuring Fee" equal to two and one-half percent (2.5%) of the gross amount of the Initial Financing, Bridge Financing and Permanent Financing due and payable on



the closing of each such financing, except payment of the Structuring Fee for the Initial Financing shall not be payable until the closing of the Bridge Financing;

(c) a "Performance Bonus" equal to Two Million Five Hundred Thousand Dollars (\$2,500,000), due and payable on the Project Opening Date, provided that the Project Opening Date occurs on or prior to the date that is the first day of the first month following the date that is Twenty-Four (24) months after the date of closing of the Permanent Financing (the "Performance Bonus Date"). For each full month after the Performance Bonus Date that the Project Opening occurs, the Performance Bonus shall be reduced by Two Hundred Fifty Thousand Dollars (\$250,000).

SECTION 4.02. Reimbursable Expenses. In addition to the Development Fee, the Structuring Fee and the Performance Fee, the Tribal Parties shall reimburse Developer for (or upon request of Developer, pay directly) all out-of-pocket expenses reasonably incurred by the Developer (i) in connection with the performance of its obligations under this Agreement, including for air travel, non-air transportation, lodging, meals, project design, market analysis, long distance telephone or fax charges, any permit and license applications and fees required of the Developer and any of its employees and/or agents for Developer to be eligible to render services to Tribal Parties in connection with the Project (including those imposed by the Tribal Parties or any Related Party of the Tribe, including any Gaming Regulatory Authority of the Tribe), (ii) the reasonable fees and expenses of the professionals engaged by Developer pursuant to SECTION 3.02 and (iii) the reasonable fees and expenses of legal counsel incurred in connection with the negotiation, documentation and enforcement of this Agreement. Developer shall provide reasonable evidence of all such reimbursed expenses at the time it makes any request for reimbursement.

SECTION 4.03. Taxation. If the Tribal Parties, or any other instrumentality of the Tribe, imposes, levies, and/or collects any tribal tax or any fee on or from Developer or any of its Related Parties during the Term, the Tribal Parties shall pay Developer an appropriate increase in the compensation due Developer under this Agreement in an amount sufficient to hold harmless Developer from the full expense of the tax or fee so imposed, levied, or collected.

## ARTICLE V.

### REPRESENTATIONS AND WARRANTIES

SECTION 5.01. Representations and Warranties of the Tribal Parties. The Tribal Parties, jointly and severally, represent and warrant as follows:

(a) Organization, Power and Authority. The Authority is a duly and validly organized instrumentality and business enterprise of the Tribe, having all privileges and immunities of the Tribe and having autonomous existence separate and distinct from the Tribe. The Tribe is a sovereign Indian nation, a federally recognized Indian tribe pursuant to a determination of the Secretary of the Interior, and an Indian tribal government pursuant to Sections 7701(a)(40)(A) of the Code. Each of the Tribal Parties is a non-taxable entity for

purposes of federal income taxation under the Code. The revenues of the Tribal Parties are exempt from federal income taxation. The Tribal Parties have: (i) full power and authority and hold all requisite government licenses, permits and other approvals to enter into and perform their obligations under this Agreement; and (ii) full power and authority to and holds all requisite material governmental licenses, permits and other approvals to finance, develop, construct, equip, furnish and operate the Project and to enter into such contracts and other commitments approved by them in connection therewith. The Authority Resolution is a duly adopted resolution of the Authority Board. The Authority is wholly owned by the Tribe, has Organic Documents including the Authority Ordinance and has the power and authority to (1) adopt the Authority Resolution, (2) enter into this Agreement, and (3) carry out and consummate the transactions contemplated on its part by the Authority Resolution and this Agreement. The Authority has no subsidiaries. All equity interests of the Authority are owned by the Tribe free and clear of all Liens. The Constitution and the Gaming Ordinance are effective in accordance with their respective terms and are the law of the Tribe. The Tribal Parties have provided Developer with a true and correct copy of each of the Organic Documents of the Tribal Parties and of all minutes, actions, resolutions and ordinances of the Tribal Parties since January 1, 2004.

(b) Authorization; Enforceability.

(i) The Tribal Parties have duly authorized all necessary action to be taken by them for: (1) the adoption of the Tribal Resolution and the Authority Resolution; (2) the execution, delivery and performance of this Agreement; (3) the payment of the fees required hereunder; (4) the execution and delivery or approval of any and all such other agreements and documents as may be required to be executed, delivered and received by the Tribe or the Authority in order to carry out, give effect to and consummate the transactions contemplated on the part of the Tribe or the Authority hereby; and (5) the consummation of all transactions contemplated on the part of the Tribe or the Authority hereby.

(ii) This Agreement (including the terms providing a limited waiver of the Tribal Parties' sovereign immunity) have been duly authorized by the Tribal Parties and, assuming the due authorization, execution and delivery of this Agreement by Developer, constitutes the legal, valid and binding obligation of the Tribal Parties, enforceable in accordance with its terms, except to the extent the enforceability thereof may be limited by laws relating to bankruptcy, insolvency, reorganization or moratorium, by other similar laws affecting creditors' rights, by the exercise of judicial discretion in accordance with principles of equity.

(iii) Except as provided hereunder, no approval of any tribal Governmental Authority, including, without limitation, any tribal Gaming Authority is required for the execution, delivery and performance of this Agreement. All ordinances, resolutions and laws of the Tribe pertaining to or relating to the Tribe, the Gaming Operations, and the transactions contemplated hereby, have been duly enacted and adopted, as necessary by the Tribe, in accordance with all applicable ordinances, acts, resolutions and laws of the Tribe.

(iv) All meetings of the Tribal Council and the Authority Board at which action was taken in connection with this Agreement were duly and legally called and held

meetings, and notice of the time and place of each such meeting was given as required by Tribal Law and the Organic Documents.

(c) Authority. The Tribe has previously taken all appropriate actions to create the Authority under Tribal Law and to authorize the Authority to execute, deliver and perform this Agreement. The Authority has the right and title to all funds generated by the Gaming Operations of the Tribe and exclusive title to all of the Gaming Assets hereinafter acquired by the Tribe or any other Component of the Tribe (other than the Mono Wind Casino); subject to the Authority Ordinance. All Gaming Operations (other than the Mono Wind Casino) are and will be conducted on behalf of the Tribe by the Authority and not through any other Component of the Tribe, subject to the Authority Ordinance.

(d) Compliance with Laws, Other Instruments, Statutes and Orders. None of the execution or delivery by the Tribal Parties of this Agreement, or the consummation of the transactions contemplated herein, nor the fulfillment of or compliance with the terms hereof will conflict with, result in a breach or violation or imposition of any lien upon any property or assets of the Tribal Parties or any of their Affiliates pursuant to: (i) any organization, statutory or legal documents of the Tribal Parties; (ii) the terms of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instrument to which the Tribal Parties or any of their Affiliates is a party or bound or to which its or their property is subject; or (iii) any local, tribal, state or federal statute, law, rule, regulation, judgment, order or decree (including, without limitation, any requirement, regulation or decree under IGRA applicable to the Tribal Parties (or any of its assets or properties whether owned or leased)). There exists no condition that, with notice, the passage of time or otherwise, would constitute a default under any such document or instrument.

(e) Litigation. Except as disclosed on Schedule 5.01(e), there is no pending or, to the knowledge of either of the Tribal Parties, threatened litigation, action or proceeding involving the Project or the Tribal Parties or challenging the financing, development, construction or operation of the Project by the Tribal Parties, or which purports to affect the legality, validity or enforceability of this Agreement or any other agreement to be entered into by the Tribal Parties in connection herewith or the transactions contemplated hereby or thereby that, if determined adversely, could reasonably be expected (either individually or collectively) to have a Material Adverse Effect.

(f) Title to Properties. As of the date hereof, the Tribe has entered into a lease arrangement which, once approved by the BIA, will be in full force and effect and will provide the Tribal Parties with the right to use all such properties as are necessary for the conduct of its operations in connection with the Project as presently contemplated to be conducted. The Tribal Parties are exploring alternate methods of securing the right to utilize the properties necessary to conduct operations in connection with the Project.

(g) Compliance with Laws and Agreements. The Tribe and each of its Subsidiaries, including the Authority, are in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, including, but not limited to, all environmental,

tax and Gaming Laws, except where the failure to do so will not result in a Material Adverse Effect.

(h) No Violations.

(i) Neither of the Tribal Parties is in violation or default of: (1) any provision of any Organic Document or resolutions or any other organizational, statutory or legal document of the Tribal Parties; (2) any term or provision of any indenture, contract, lease, mortgage, deed of trust, note agreement, loan agreement or other agreement, obligation, condition, covenant or instruction to which it is a party or bound or to which its property is subject; or (3) any local, tribal, state, or federal law, statute, ordinance, rule, regulation, requirement, judgment or court decree (including, without limitation, the IGRA) applicable to the Tribal Parties or any of their assets or properties (whether owned or leased). To the best knowledge of the Tribal Parties, there exists no condition that, with notice, the passage of time or otherwise, would constitute a default under any such document or instrument.

(ii) Neither of the Tribal Parties is a party or subject to any law, rule, regulation, rule or order, or any obligation under any agreement or instrument, or any circumstance, condition or occurrence that has or could reasonably be expected to have a Material Adverse Effect.

(i) Licenses. Except to the extent Sections 6.4.5 or 6.4.6 of the Compact may be deemed by a Person other than the Tribal Parties or any Related Party of the Tribe (including any Gaming Regulatory Authority of the Tribe) to require Developer to be licensed, it is not necessary under the Tribal Law that Developer be licensed, qualified or entitled to carry on business in any jurisdiction by reason of the execution, delivery, performance or enforcement of any of this Agreement. Neither the Tribal Parties or any Related Party of the Tribe (including any Gaming Regulatory Authority of the Tribe) have adopted any law, rule, regulation, ordinance or resolution which requires Developer to be licensed, including any law, rule, regulation, ordinance or resolution pursuant to Sections 6.4.5 or 6.4.6 of the Compact or otherwise.

(j) Other Matters.

(i) The Tribe has the requisite power and authority to enter into, and has duly authorized, executed and delivered, the Compact pursuant to IGRA. The Compact has been duly and validly authorized by the Tribal Council, has been approved by the members of the Tribe consistent with the Constitution, was deemed approved by the Secretary of the Interior pursuant to IGRA, took effect on May 16, 2000 upon publication in the Federal Register as required by IGRA, and is in full force and effect in accordance with its terms. The Compact is a valid and binding obligation of the Tribe, and is enforceable against the Tribe in accordance with its terms. The Tribal Parties are in material compliance with the terms of the Compact. The parties acknowledge the Tribe will seek an amended Compact with the State of California to allow for sufficient gaming positions at the Project.

(ii) The Gaming Ordinance authorizes gaming by the Tribal Parties under the IGRA on all lands eligible for gaming under the Compact, and has been approved by the NIGC in accordance with the requirements of the IGRA.

(iii) The Tribe has not enacted any law, rule, regulation, act or ordinance pertaining to zoning ordinances or eminent domain.

(iv) The Constitution of the Tribe, originally adopted on February 21, 2000 was validly adopted by the Tribe, is the law of the Tribe and is effective according to its terms and was last amended on June 18, 2003.

(v) The Tribal Council is the duly elected governing body of the Tribe, with full power and authority to bind the Tribe, and to execute and deliver this Agreement.

(vi) No initiative or referendum rights exist for members of the Tribe permitting any member or any number of members of the Tribe to call for or conduct, in any manner, a review of any action taken by the Tribal Parties, the Tribal Council or the Authority Board, whether by way of an initiative, referendum or otherwise, with respect to any authorization, execution, delivery or performance of its obligations under this Agreement or any actions contemplated to be taken by the Tribal Parties, the Tribal Council or the Authority Board in connection therewith.

(vii) Arm's Length. Each of the Tribal Parties acknowledges and agrees that: (1) the Agreement represents an arm's-length commercial transaction between the Tribal Parties and the Developer; (2) the Developer is and has been acting solely as principal and is not the agent or fiduciary of the Tribal Parties or its creditors, employees or any other party; (3) the Developer has not assumed or will not assume a fiduciary responsibility in favor of the Tribal Parties; (4) the Developer and its respective affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Tribal Parties; and (5) the Developer has not provided any legal, accounting, regulatory or tax advice with respect to the transactions contemplated hereby and the Tribal Parties have consulted their own legal, and other advisors to the extent they deemed appropriate.

(k) Waivers. Each of the Tribal Parties has duly authorized the limited waiver of sovereign immunity contained in this Agreement pursuant to a resolution duly adopted by each of the Tribal Parties. No approval of a Governmental Authority, including without limitation the BIA, is required for such limited waiver of sovereign immunity to be enforceable, and such waiver of sovereign immunity and the provisions thereof relating thereto, and the submission to jurisdiction, agreement for arbitration, and choice of law provisions, all as set forth herein, are valid, enforceable and irrevocable obligations of each of the Tribal Parties, duly authorized and consented to by each of the Tribal Parties.

(l) No Development and Management Agreements, etc. Except as disclosed in writing to the Developer, neither the Tribal Parties nor any of their Subsidiaries is contractually bound by any advisory, financing, consulting, development, management or similar agreement granting any other party the right to provide services with respect to the financing,

development, construction or operation of Resort Operations, including, but not limited to, Gaming Activities and Gaming Assets.

(m) Project. The Tribal Parties intend to (i) take all commercially reasonable actions necessary or appropriate to cause the Project to be constructed and placed into operation as soon as reasonably practical and (ii) take all commercially reasonable actions necessary to obtain an amended compact with the State of California providing for a sufficient number of licenses for gaming machines to operate the Project as currently contemplated.

(n) Disclosure. The Tribal Parties have disclosed to the Developer all agreements, instruments and corporate or other restrictions to which it is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Tribal Parties to the Developer in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

SECTION 5.02. Representations and Warranties of the Developer. The Developer represents and warrants as follows:

(a) Organization, etc. The Developer is a duly and validly organized limited liability company organized and in good standing under the laws of the state of its formation and has: (i) all requisite power and authority to carry on its business as now and as proposed to be conducted; and (ii) full power and authority and holds all requisite material governmental licenses, permits and other approvals to enter into and perform its obligations under this Agreement.

(b) Due Authorization, Non-Contravention, etc. The execution, delivery and performance by the Developer of this Agreement and each other document referred to herein to which they are a party are within the Developer's limited liability company powers and have been duly authorized by all necessary member action and do not: (i) contravene its organization documents; contravene any law or governmental regulation or court decree or order binding on or affecting the Developer; or (iii) violate or result in a default under any indenture, agreement or other instrument binding upon the Developer.

(c) Validity, etc. This Agreement has been duly executed and delivered by the Developer and constitutes, and, on the due execution and delivery hereof, constitutes, the legal, valid and binding obligation of the Developer enforceable in accordance with its respective terms.

(d) Compliance with Laws and Agreements. The Developer is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property,

including, but not limited to, all tax and Gaming Laws, except where the failure to do so will not result in a Material Adverse Effect.

ARTICLE VI.

COVENANTS OF THE TRIBAL PARTIES

During the Term, the Tribal Parties covenant as follows:

SECTION 6.01. Affirmative Covenants

(a) Existence; Conduct of Business. The Tribe shall do all things necessary to maintain the existence of the Tribe as a sovereign Indian nation and a federally recognized Indian tribe. The Tribe shall do all things necessary to maintain the existence of the Authority as a duly and validly organized instrumentality and business enterprise of the Tribe, having all privileges and immunities of the Tribe and having autonomous existence separate and distinct from the Tribe.

(b) Status of Project Site for Gaming Operations. The Tribal Parties shall execute any and all further documents, agreements and instruments, and do all things necessary and take all such further actions which may be required to ensure that the Project Site will be eligible for gaming pursuant to IGRA.

(c) Environmental Impact Report. If Developer notifies either of the Tribal Parties in writing that it has determined that applicable law requires an environmental assessment or finding of no significant impact, then the Tribal Parties shall make diligent efforts to obtain such report promptly and to deliver a copy of the report to Developer.

(d) Compact. The Tribe shall make diligent efforts to pursue the negotiation, execution and approval by the State of California of an amended gaming compact with the State of California to allow for sufficient gaming positions at the Project.

(e) Requirement of Law. The Tribal Parties covenant and agree that they shall perform their obligations under this Agreement and develop, construct and operate the Project in compliance with the Requirement of Law.

(f) Legal Opinion. The Tribal Parties covenant and agree that within sixty (60) days from the date of this Agreement they shall deliver to Developer a legal opinion of the Tribal Parties' outside counsel as to the enforceability of this Agreement and the waivers of sovereign immunity contained herein in a form and substance reasonably acceptable to Developer and Developer's legal counsel.

SECTION 6.02. Negative Covenants

(a) Impairment. During the Term hereof, the Tribe nor any instrumentality or Governmental Authority thereof, shall not unnecessarily or in bad faith enact any law (or rescind

or invalidate any law) the effect of which would be to impair the obligations of the Tribal Parties, or the rights of the Developer, hereunder.

(b) Licenses. Except to the extent required by a Person other than the Tribe pursuant to Sections 6.4.5 or 6.4.6 of the Compact, neither the Tribal Parties nor any Related Party of the Tribe (including any Gaming Regulatory Authority of the Tribe) shall adopt any law, rule, regulation, ordinance or resolution which requires the Lender to be licensed. Neither the Tribal Parties nor any Related Party of the Tribe (including any Gaming Regulatory Authority of the Tribe) shall unreasonably refuse to grant such gaming or other licenses as the Developer or its employees shall duly apply, and shall cooperate with Developer in the obtaining of any such licenses.

(c) Bankruptcy or Similar Laws. The Tribal Parties shall not enact any bankruptcy or similar law for the relief of debtors or file for relief under the United States bankruptcy laws.

## ARTICLE VII.

### TERM; EVENTS OF DEFAULT; TERMINATION

SECTION 7.01. Term. This Agreement shall commence on the date first set forth above and shall terminate upon the earlier to occur of: (a) the Project Opening Date; or (b) such time as all amounts due and owing to Developer are paid hereunder (the "Term"); provided, however, that the terms of Article IV shall survive until all amounts payable under this Agreement have been paid to the Developer in full.

SECTION 7.02. Termination for Cause by Developer. Developer may, but shall not be required, to terminate this Agreement if any of the following events of default have occurred:

(a) Upon the repudiation or occurrence of a Material Breach of this Agreement by the Tribal Parties, if such Material Breach has gone unremedied for a period of thirty (30) days after written notice of such Material Breach is provided to the Tribal Parties.

(b) Upon the repudiation, or occurrence of a Material Breach, if such Material Breach has gone unremedied for a period of thirty (30) days after written notice of such Material Breach is provided to the Tribal Parties, of any material agreement (other than this Agreement), by the Tribe, or any Governmental Authority of the Tribe, entered into in connection with the financing, developing, constructing equipping, furnishing and opening of the Project.

If any event of default described above occurs and Developer notifies the Tribal Parties in writing that this Agreement is terminated as a result thereof, Developer's commitments under this Agreement shall terminate immediately and any and all outstanding obligations, including any sums due and owing under this Agreement, shall immediately become due and payable. In addition, Developer shall be entitled to payment of any Development Fee with respect to the Project Costs of the Project that has not yet been paid (which amount shall be payable



notwithstanding the fact that the Project has not been completed and the Project Opening Date has not occurred). In addition, Developer and the Tribal Parties may exercise any other rights and remedies available to them under Applicable Law and the terms of this Agreement.

SECTION 7.03. Termination for Cause by Tribal Parties. The Tribal Parties may, but shall not be required, to terminate this Agreement if any of the following events of default have occurred:

(a) If the closing of the Bridge Financing has not occurred within one hundred eighty (180) days of the later to occur of (i) all regulatory approvals are obtained in order for the Tribe to obtain use of the Project Site under a long term lease and to commence construction of the Project (including approval by the BIA of any lease or a trust to trust transfer); and (ii) the date of this Agreement (which period will be extended for an additional ninety (90) day period so long as the Developer is using diligent efforts in good faith to arrange financing);

(b) If the closing of the Permanent Financing has not occurred within one hundred eighty (180) days of the later to occur of: (i) all regulatory approvals are obtained in order for the Tribe to obtain use of the Project Site under a long term lease and to commence construction of the Project; (ii) all water, power and utility needs for the Project are satisfied; (iii) the Tribe enters into a new compact with the State of California providing for licenses to operate a minimum of 2,000 Class III Gaming machines; and (iv) such other conditions as are set forth and agreed to as part of the Project Documents (which period will be extended for an additional ninety (90) day period so long as the Developer is using diligent efforts in good faith to arrange financing).

(c) Upon the occurrence of a Material Breach of this Agreement by the Developer, if such Material Breach has gone unremedied for a period of thirty (30) days after written notice of such Material Breach is provided to the Developer.

If any event of default described above occurs and the Tribal Parties notify the Developer in writing that this Agreement is terminated as a result thereof, Developer's commitments under this Agreement shall terminate immediately and any and all outstanding obligations, including any sums due and owing under this Agreement, shall immediately become due and payable. In addition, Developer shall be entitled to payment of any Development Fee with respect to the Project Costs of the Project that has not yet been paid (which amount shall be payable notwithstanding the fact that the Project has not been completed and the Project Opening Date has not occurred). In addition, Developer and the Tribal Parties may exercise any other rights and remedies available to them under Applicable Law and the terms of this Agreement.

SECTION 7.04. Involuntary Termination Due to Requirement of Law. The parties hereby agree to use their respective commercially reasonable efforts to ensure this Agreement conforms to and complies with all Requirement of Law. In the event of any change in State or federal law or regulations or action by any Governmental Authority that results in a final determination that this Agreement is unlawful or unenforceable, the Tribal Parties and the Developer agree to use their respective good faith efforts to amend this Agreement in a mutually satisfactory manner which will result in compliance with such Requirement of Law and not

materially change the rights, duties and obligations of the parties hereunder. The parties shall negotiate the terms of any such amendment in good faith. In the event such amendment cannot be legally effected following the exhaustion of all such good faith efforts, either party shall have the right to terminate this Agreement upon notice to the other party.

SECTION 7.05. Mutual Voluntary Termination. This Agreement may be terminated upon the mutual written consent of the parties.

ARTICLE VIII.  
DISPUTE RESOLUTION

The parties agree to the following means of resolving disputes under the terms of this Agreement:

SECTION 8.01. Governing Law. This Agreement is and will be, governed by and construed in accordance with the laws of the State of California but without giving effect to applicable principles of conflicts of law to the extent that the application of the law of another jurisdiction would be required thereby. The parties hereto agree that the transactions arising under this Agreement occurred outside Tribal lands in the State of California.

SECTION 8.02. Forum Selection. Each party hereto irrevocably and unconditionally submits, for itself and its property subject to the provision in this SECTION 8, to the exclusive jurisdiction for any claim arising hereunder of (i) the United States District Court for the Central District of California (of if such court determines it is unwilling or unable to hear the dispute, any other federal court of competent jurisdiction in the State of California) (and any court having appellate jurisdiction thereof) and (ii) if, and only if the federal courts identified in SECTION 6.02(i) determine that they lack jurisdiction over any claim arising hereunder, the Superior Court in and for Los Angeles County, California (of if such court determines it is unwilling or unable to hear the dispute, any other state court of in the State of California (and any court having appellate jurisdiction thereof) (collectively, the "Applicable Courts").

SECTION 8.02. Limited Waiver of Sovereign Immunity. Each Tribal Party hereby agrees to the following provisions regarding limited waiver of sovereign immunity and dispute resolution.

(a) Retention of Sovereign Immunity. By executing this Agreement, neither of the Tribal Parties in any way waives, limits or modifies its sovereign immunity from unconsented suit, judicial litigation or arbitration, except as provided in this ARTICLE VIII.

(b) Tribal Mandatory Language. ANY WAIVER OF TRIBAL SOVEREIGN IMMUNITY CONTAINED IN OR CONSTRUED FROM THIS AGREEMENT IS EXPRESSLY LIMITED BY AND SHALL BE NARROWLY CONSTRUED IN ACCORDANCE WITH GENERAL COUNCIL RESOLUTION NO. 0307-05GC OF THE BIG SANDY BAND OF WESTERN MONO INDIANS, A FEDERALLY RECOGNIZED INDIAN TRIBE, WHICH RESOLUTION IS INCORPORATED HEREIN BY REFERENCE (AS SUCH

RESOLUTION MAY BE AMENDED BY THE GENERAL COUNCIL RESOLUTIONS CONTEMPLATED HEREBY).

(c) Scope of Waiver. Subject to the provisions of this ARTICLE VIII, each of the Tribal Parties hereby expressly, irrevocably and unconditionally grant to Developer a limited waiver of its sovereign immunity, including its sovereign immunity for claims brought under the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301 et. seq., (and any defense based thereon) from unconsented suit and arbitration and consents to suit and arbitration in accordance with this ARTICLE VIII.

(d) Procedural Requirements. Each of the Tribal Parties' limited waiver of its sovereign immunity as to unconsented suit and arbitration is effective if, and only if, each and every one of the following conditions is met:

(i) The claim is made by Developer and not by any other person whatsoever;

(ii) The claim alleges a breach by the Tribal Parties of one or more of the specific representations, warranties, obligations or duties of the Tribal Parties under the terms of this Agreement;

(iii) The claim seeks: (1) payment of a specified sum, some specific action, or discontinuance of some action (including, without limitation, an injunction to cause such specific action to be taken or discontinued, as the case may be), by such Tribal Party to bring the Tribal Party into full compliance with the representations, warranties, duties and obligations of such Tribal Party under this Agreement; or (2) money damages for misrepresentations under or noncompliance with the terms and provisions of this Agreement;

(iv) The claim is made in a detailed written statement to the Tribal Party, stating the specific action or discontinuance of action by the Tribal Party that would cure the alleged breach or non-performance, or the sum of money claimed to be due and owing from the Tribal Party to Developer by reason of such specific breach or non-performance, and the Tribal Party shall have twenty (20) calendar days to cure such breach or non-performance or to make such payment before judicial or arbitration proceedings may be instituted; provided, that this cure period may be reasonably extended in the sole discretion of Developer, acting reasonably, for non-monetary matters as long as the Tribal Party is making good faith efforts to cure such breach or non-performance;

(v) With respect to any claim authorized in this ARTICLE VIII, initial suit, as authorized herein, shall be commenced within the later of three (3) years after the claim accrues or is discovered upon the exercise of due diligence, or such claim shall be forever barred. The waiver granted herein shall commence on the date hereof and shall continue for three years following the date of the termination of this Agreement, except that the waiver shall remain effective for any proceedings then pending, and all appeals therefrom.

(e) Exhaustion of Tribal Remedies; Enforcement.

(i) Each Tribal Party consents to the jurisdiction of, to be sued in and to accept and be bound by any order or judgment of the United States District Court for the Central District of California, the Superior Court in and for Los Angeles County, California, and any federal or state court having appellate jurisdiction thereover (the "Applicable Courts"), consistent with the terms and provisions of this ARTICLE VIII. Each Tribal Party irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or other proceeding in the Applicable Courts and irrevocably and unconditionally waives and agrees not to plead or claim in any such court has been brought in an inconvenient forum.

(ii) Each Tribal Party hereby expressly and irrevocably waives:

(1) its rights to have any dispute, controversy, suit, action or proceeding arising under this Agreement heard in any other forum whether or not such forum now exists or is hereafter created including, without limitation, any Tribal court or other tribunal or forum, council or adjudicative body of the Tribe (each, a "Tribal Forum");

(2) any claim which it may possess to the exercise of jurisdiction by any Tribal Forum, including, without limitation, any determination that any Tribal Forum has jurisdiction over any such dispute, controversy, suit, action or proceeding or jurisdiction to determine the scope of such Tribal Forum's jurisdiction;

(3) any requirement which may exist for exhaustion of any remedies available in any Tribal Forum prior to the commencement of any dispute, controversy, suit, action or proceeding in any state or federal court even if any such Tribal Forum would have concurrent jurisdiction over any such dispute, controversy, suit, action or proceeding but for such waiver;

(4) its sovereign immunity as to an action by Developer in any Applicable Court seeking injunctive and/or declaratory relief against the Tribal Party based upon an attempt by the Tribal Party to revoke its waiver of its sovereign immunity or other waivers granted in this ARTICLE VIII; and

(5) its sovereign immunity from a judgment or order (including any appellate judgment or order) and post judgment proceedings supplemental thereto consistent with the terms and provisions of this ARTICLE VIII, which is final because either the time for appeal thereof has expired or the judgment or an order issued by a court having final appellate jurisdiction over the matter.

Without in any way limiting the generality of the foregoing, each Tribal Party expressly authorizes any Governmental Authority who has the right and duty under applicable law to do so to take any action authorized or ordered by any Applicable Court, including to take such action as

may be legally available to give effect to any such judgment or order entered, subject to this ARTICLE VIII.

(f) Recourse Limitation. Any award against Tribal Parties arising from any claim allowed to proceed according to this waiver may be enforced and collected only against the assets and revenues derived from Gaming Operations or any other casino facilities operated by the Tribe in Fresno County, California, if any, other than the Mono Wind Casino.

SECTION 8.03. Dispute Resolution.

(a) Notwithstanding the irrevocable submission to the jurisdiction of the Applicable Courts described above, each of the parties to this Agreement hereby irrevocably and unconditionally agrees that if a dispute arises between the parties (with "parties" referring to each of the Tribe, the Authority and the Developer over a matter for which each of the Tribal Parties has provided a limited waiver of immunity under this Agreement (the "Dispute")), any party may, if such party has sought to have the dispute resolved in a federal and state court pursuant to Section 8.02 and such Applicable Courts have determined they are unwilling or unable to hear the dispute, submit any controversy, claim, suit or other action between or among the parties arising out of or relating to this Agreement or the enforcement of rights hereunder, to binding arbitration in accordance with the procedures set forth herein. Any arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. In any arbitration, one arbitrator shall preside and shall be selected by the American Arbitration Association. Any action or proceeding seeking to vacate, modify or correct any arbitration award shall be brought and heard exclusively in an Applicable Court in accordance with and applying the Federal Arbitration Act, 9 U.S.C., Sec. 1 et. seq., as amended from time to time; provided, however, that if, and only if, the Applicable Court fails or refuses to apply the Federal Arbitration Act, such court then shall determine the matter in accordance with and applying the applicable law of the State of California. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy will not constitute a waiver of the right of any party to submit the controversy or claim to arbitration if any other party contexts such action for judicial relieve.

(b) Any party, before or during any arbitration, may apply to the Applicable Court for a temporary restraining order or preliminary injunction where such relief is necessary to protect its interests pending completion of the dispute resolution proceedings.

(c) Neither party nor the arbitrator may disclose the existence or results of any arbitration hereunder, which shall be considered confidential to the parties, except:

(i) with the express prior written consent of the other party, which consent shall not be unreasonably withheld;

(ii) as required by applicable law, the rules of any relevant stock exchange or requirement of any party, by order or decree of a court or other governmental authority

having jurisdiction over such party, or in connection with such party's enforcement of any rights it may have at law or in equity;

(iii) on a "need to know" basis to persons within or outside such party's organization, such as attorneys, accountants, bankers, financial advisors and other consultants; or

(iv) after such information has become publicly available without breach of this Agreement.

(d) In the event of arbitration, the prevailing party(ies) shall be entitled to all of its costs, including reasonable attorneys' fees, from the non-prevailing party(ies).

(e) The arbitration shall take place at a location in an agreed city in the State of California or such other place as the parties may jointly agree. If the parties are unable to agree to a place or location for the arbitration, the arbitration shall take place at the offices of the American Arbitration Association in Los Angeles, California. The parties and the arbitrator shall maintain strict confidentiality with respect to the arbitration. The arbitrator shall render a written award within forty-five (45) days from the conclusion of the arbitration.

(f) The decision of the arbitrator shall be final and binding and enforced with the same force and effect as a decree of a court having competent jurisdiction. For this purpose, should the losing party in any arbitration proceeding refuse to abide by the decision of the arbitrator, the prevailing party may apply to any Applicable Court, to compel enforcement of the arbitrator's award resulting from binding arbitration and each party hereto consents to the jurisdiction of each such court for this purpose. Each Tribal Party hereby expressly and irrevocably waives its sovereign immunity, to the limited extent as set forth in this ARTICLE VIII, with respect to the entry of judgment on, and enforcement of, such award by such courts to the limited extent set forth in this ARTICLE VIII.

(g) Each Tribal Party shall comply with and observe each order, award, judgment or decree entered by any Applicable Court with respect to any Claim permitted under this Section (collectively, "Orders").

**SECTION 8.04. Covenants Regarding Sovereign Immunity; Injunctive Relief.**

Each Tribal Party covenants and agrees that the Tribal Party's limited waiver of sovereign immunity and other waivers contained in this ARTICLE VIII are irrevocable and unconditional and agrees not to revoke or limit, in whole or in part, the Tribal Party's limited waiver of sovereign immunity or other waivers contained in this ARTICLE VIII or in any way attempt to revoke or limit, in whole or in part, such limited waiver of sovereign immunity or other waivers, as the case may be. In the event that either Tribal Party: (a) revokes, limits, or attempts to revoke or limit its waivers hereunder, (b) takes any action that is inconsistent with the waivers granted in this ARTICLE VIII, (c) fails to submit to the jurisdiction of the Applicable Courts as provided herein; or (d) breaches its obligation to prohibit each Tribal Forum from exercising jurisdiction, as aforesaid, the parties expressly recognize and agree that there remains no adequate remedy at law available to Developer and that Developer will be irreparably injured. In any such event, each Tribal Party hereby agrees that Developer may seek immediate judicial injunctive relief as

provided in this ARTICLE VIII without first complying with any of the prerequisites contained in this ARTICLE VIII and each Tribal Party consents to the entry of appropriate injunctive relief, consistent with the terms and conditions of this Agreement. Any action seeking injunctive relief under this ARTICLE VIII shall be brought in any Applicable Court, and each Tribal Party expressly consents to the jurisdiction of, and agrees to be bound by any order or judgment of such Applicable Court.

SECTION 8.05. Service of Process. In any legal action or proceeding as to which each of the Tribal Parties has waived its sovereign immunity as provided in this ARTICLE VIII, each Tribal Party consents and agrees that process against either Tribal Party shall be effective if served to the parties listed in Section 10.01. Each Tribal Party irrevocably appoints each of the persons listed in Section 10.01 and their respective successors in said offices from time to time, as such Tribal Party's agents for service of process made in accordance with this ARTICLE VIII.

## ARTICLE IX.

### DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified below:

“Affiliate” of any Person means any other Person which, directly or indirectly, controls, is controlled by or is under common control with such Person. A Person shall be deemed to be “controlled by” any other Person if such other Person possesses, directly or indirectly, power (a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managing general partners; or (b) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“Agreement” has the meaning assigned to it in the opening paragraph of this Agreement.

“Applicable Courts” has the meaning assigned to it in SECTION 8.01.

“Authority” has the meaning assigned to it in the preambles of this Agreement.

“Authority Board” is the governing body of the Authority, as defined in Article 9 of the Authority Ordinance.

“Authority Ordinance” means the Big Sandy Entertainment Authority Act of 2004, adopted by the General Council of the Tribe on August 20, 2004 pursuant to Tribal Ordinance No. 0804-02, which provides, among other things, that Authority has the exclusive right, title and authority to finance, develop, construct, own, lease, operate, manage and promote the Project.

“Authority Resolution” means the resolutions adopted by the Authority Board of the Authority authorizing, among other matters, the execution, delivery and performance of this Agreement.

“BIA” means the United States Department of the Interior Bureau of Indian Affairs.

“Bridge Financing” shall mean financing for the Project of approximately \$15 to \$25 million to fund development activities through the time of the Permanent Financing and certain working capital requirements of the Tribe (including leasehold payments to Sherrill McCabe Esteves, monthly payments to support the activities of the Tribal government in an amount to be agreed and outstanding accounts payable of the Tribe to be agreed).

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

“Class II Gaming” means Class II games as defined in the IGRA and the rules and regulations of the NIGC.

“Class III Gaming” means all gaming that is not Class I or Class II Gaming under the IGRA and the rules and regulations of the NIGC.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Compact” means that certain Compact between the Tribe and the State of California authorizing the Tribe to conduct Class III Gaming activities.

“Component of the Tribe” means any enterprise, authority, division, subdivision, branch or other agency, instrumentality or other government component of the Tribe.

“Constitution” means the Constitution of the Tribe, dated February 21, 2000, as last amended on June 18, 2003.

“Credit Agreement” has the meaning assigned to it in the preambles of this Agreement.

“Developer” has the meaning assigned to it in the opening paragraph of this Agreement.

“Development Fee” has the meaning assigned to it in SECTION 4.01.

“Dispute” has the meaning assigned to it in SECTION 8.04.

“Gaming Activities” means any and all activities by the Tribal Parties that are or were defined as Class II or Class III gaming under IGRA or any other gaming activity.



“Gaming Assets” means any now owned or hereafter acquired property that is used in, intended to be used in or associated with future Gaming Operations.

“Gaming Board” means, collectively: (a) the Big Sandy Gaming Commission; (b) the NIGC; and (c) any other Governmental Authority that holds licensing or permit authority over Gaming Activities conducted by the Tribal Parties within the Tribe’s jurisdiction.

“Gaming Operations” means all gaming operations related to the Project conducted by the Tribal Parties, or any Affiliate or instrumentality thereof, and all entertainment, recreation, food and beverage, hotel, retail and other related operations related to the Project conducted on or adjacent to the Project Site,

“Gaming Laws” means IGRA, the Gaming Ordinance and all other laws pursuant to which any Gaming Board possesses licensing or permit authority over Gaming Activities conducted by the Tribal Parties within the Tribe’s jurisdiction.

“Gaming Ordinance” means the Tribe’s Gaming Ordinance, which was duly and validly adopted by the Tribal Council on May 1, 2002 and approved by the NIGC, as the same may be amended as of the date hereof and may be amended from time to time in accordance with IGRA.

“General Council Resolutions” means resolutions adopted by the General Council of the Tribe authorizing, among other matters the sovereign immunity waiver, waiver of requirement of exhaustion of tribal remedies and consent to jurisdiction included in this Agreement.

“Governmental Authority” means any Federal, state, local, tribal or foreign court or governmental (including tribal) agency, authority, instrumentality or regulatory body, including any central bank.

“IGRA” means the Indian Gaming Regulatory Act of 1988, as amended, codified at 25 U.S.C. Section 2701, *et seq.*

“Indemnitee” has the meaning assigned to it in SECTION 10.06.

“Initial Financing” has the meaning assigned in the preambles of this Agreement.

“Material Adverse Effect” means a materially adverse effect on (a) the business, assets, operations, condition (financial or otherwise), contingent liabilities or prospects of the Tribal Parties involving a potential cost or loss of \$50,000 or more, (b) the ability of the Tribe or the Authority to perform any of its obligations under this Agreement or any other agreement entered into among the Tribal Parties, on the one hand, and the Developer or the Lender or their respective Affiliates, on the other hand, (c) the rights of or benefits available the Developer under any such agreements, (d) the ability of the Tribal Parties to finance, develop, construct, open or operate the Project; provided, a Material Adverse Effect will not include adverse change or effect (i) resulting from any change in global economic, financial or market conditions, or (ii) that negatively affects the tribal gaming industry generally.

“Material Breach” means: (i) the failure of a party to perform a material obligation; or (ii) any representation or warranty provided by a party under an applicable agreement is false or erroneous in any material respect.

“Mono Wind Casino” means the Mono Wind Casino, located at 37302 Rancheria Lane Auberry, California 93602-1060.

“NIGC” means the National Indian Gaming Commission or any successor agency thereto.

“Organic Document” means with respect to the Tribe, the Constitution, the Gaming Ordinance and the General Council Resolutions, and with respect to the Authority, the Authority Ordinance and the Authority Resolution..

“Performance Bonus” has the meaning assigned to it in SECTION 4.01.

“Performance Bonus Date” has the meaning assigned to it in SECTION 4.01.

“Permanent Financing” shall mean financing for the Project in an amount necessary to fund the construction, equipping and related costs of the Project, currently estimated to be approximately \$300 to \$350 million

“Person” means any natural person, corporation, trust, joint venture, association, company, partnership, limited liability company or government, or any agency or political subdivision thereof.

“Project” has the meaning assigned to it in the preambles to this Agreement.

“Project Costs” means the aggregate costs of developing, constructing, equipping and opening the Project, and specifically includes all “hard” and “soft” costs, including, but not limited to, the fees, costs and expenses of all materials, furniture, fixtures, equipment, contractors, architects, designers, attorneys and other professionals and consultants hired by or on behalf of the Tribe or its Affiliates in connection with the development, construction, equipping and opening of the Project.

“Project Documents” means this Agreement together with any consulting agreement that may be entered into among the parties.

“Project Opening Date” means the first day that the Project commences operations that are open to the public for a minimum of ten (10) continuous days, with at least 50% of main gaming floor open.

“Project Site” has the meaning assigned to it in the preamble of this Agreement.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Requirement of Law” means, as to any Person, any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case binding upon such Person or any of its property or assets or to which such Person or any of its property or assets is subject.

“Resort Operations” means any and all Gaming Activities and any and all hotel, hospitality or related operations, including, but not limited to, operations related to the sale of food and beverages and resort activities other than Gaming Activities, including, but not limited to, golf, spas, horseback riding, boating, camping and shooting, whether conducted by the Tribe or any Subsidiary of the Tribe.

“SPI Violation” has the meaning assigned to it in SECTION 10.08.

“Structuring Fee” has the meaning assigned to it in SECTION 4.01.

“Subsidiary” means, with respect to any Person, any corporation, association, joint venture, partnership, unincorporated enterprise, authority or instrumentality or other business entity (whether now existing or hereafter organized) that is controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

“Term” has the meaning assigned to it in SECTION 7.01.

“Tribe” has the meaning assigned to it in the opening paragraph of this Agreement.

“Tribal Council” means the governing body of the Tribe, which consists of 5 members.

“Tribal Court” means the judicial authority of the Tribe appointed pursuant to its Organic Documents.

“Tribal Forum” has the meaning assigned to it in SECTION 8.02.

“Tribal Law” means all ordinances, acts, resolutions, official actions and laws of the Tribe.

“Tribal Parties” has the meaning assigned to it in the preamble of this Agreement.

“Tribal Resolution” means the resolution adopted by the Tribal Council authorizing, among other matters, the execution, delivery and performance of this Agreement.

ARTICLE X.

MISCELLANEOUS

SECTION 10.01. Notices. Notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, sent by telecopy or electronic mail, as follows:

- (a) if to the Tribe, to it at

Big Sandy Rancheria Band of Western Mono Indians  
37387 Auberry Mission Road  
Auberry, California 93602  
Attention: Chairperson  
Tel: (559) 855-2103  
Fax: (559) 855-4129

- (b) if to the Authority, to it at

Big Sandy Entertainment Authority  
37387 Auberry Mission Road  
Auberry, California 93602  
Attention: Chairperson  
Tel: (559) 855-2103  
Fax: (559) 855-4129

with a copy to:

Holland & Knight LLP  
633 West Fifth Street, 21<sup>st</sup> Floor  
Los Angeles, CA 90071  
Attn: Rory E. Dilweg, Esq.  
Tel: (213) 896-2563  
Fax: 213.896.2450

- (c) and if to Developer

Brownstone LLC  
American Vantage Companies  
P.O. Box 81920  
Las Vegas, Nevada 89180  
Attention: Ron Tassinari  
Tel: (702) 227-9800  
Fax: (702) 227-8525

with a copy to (which will not constitute notice):

Akin Gump Strauss Hauer & Feld LLP  
2029 Century Park East, Suite 2400  
Los Angeles, California 90067  
Attention: Frank Reddick, Esq.  
Tel: (310) 728-3204  
Fax: (310) 229-1001

All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt (if delivered by hand or overnight courier service) or on the date five (5) Business Days after dispatch by certified or registered mail (if mailed), if delivered, sent or mailed (properly addressed) to such party as provided in this SECTION 10.01 or in accordance with the latest unrevoked direction from such party given in accordance with this SECTION 10.01.

A party shall be deemed to receive a notice or communication on the last day each party entitled to receive notice for such party (including, for avoidance of doubt such party), shall have received or been deemed to have received such notice or communication.

SECTION 10.02. Survival of Agreement. All covenants, agreements, representations and warranties made by the parties herein shall survive the performance of each party's obligations hereunder, regardless of any investigation made by any other party or on its behalf notwithstanding that such other party may have had notice or knowledge of any default or event of default or incorrect representation or warranty at the time any performance is made hereunder by such other party, and shall continue in full force and effect as long as this Agreement has not expired or been terminated pursuant to ARTICLE VII. The provisions of SECTION 10.06 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby or the termination of this Agreement or any provision hereof.

SECTION 10.03. Independent Agreement. The objective of the Tribal Parties and the Developer in entering into this Agreement is to provide a legally enforceable procedure and agreement pursuant to which Developer will provide the services described herein and arrange for the Permanent Financings for the Project so that the Project can commence operations as soon as practicable and to set forth the obligations of the respective parties in the event that the Project is unable to be developed and constructed for any reason. This Agreement is intended to be a legally enforceable agreement independent of any other agreement referred to herein, is not intended by the parties to be construed as a "management agreement" within the meaning of IGRA, and shall be enforceable among the parties regardless of any approvals that may be required with respect to any of such other agreements.

SECTION 10.04. Binding Effect. This Agreement shall become effective when it shall have been executed by the Tribal Parties and Developer, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

SECTION 10.05. Successors and Assigns. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the permitted successors and assigns of such party. All covenants, promises and agreements by or on behalf of the Tribal Parties or the Developer that are contained in this Agreement shall bind and inure to the benefit of their respective successors and assigns. Nothing in this Agreement, expressed or implied, shall be construed to confer any rights upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby). Subject to the proviso in this sentence, the rights and obligations under this Agreement may not be assigned by either party hereto without all of the other parties written consent; provided, that Developer may assign its rights, but not its obligations, under this Agreement without the necessity the Tribal Parties' consent.

SECTION 10.06. Expenses; Indemnity.

(a) Each of the Tribal Parties, jointly and severally, agrees to pay all reasonable out-of-pocket expenses incurred by Developer, including the reasonable fees, charges and disbursements of its counsel, in connection with the preparation of this Agreement and the other agreements referred to herein or in connection with any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions hereby contemplated shall be consummated).

(b) Each of the Tribal Parties, jointly and severally, agrees to pay all out-of-pocket expenses incurred by Developer in connection with the enforcement or protection of its rights in connection with this Agreement (including its rights under this Section) and the other agreements referred to herein.

(c) Each of the Tribal Parties, jointly and severally, agrees to indemnify Developer, each Affiliate of Developer and each of their respective Related Parties (each such Person being called an "Developer Indemnitee") against, and to hold each Developer Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Developer Indemnitee arising out of, in any way connected with, or as a result of: (i) the execution or delivery of this Agreement or any other agreement or instrument contemplated thereby, the performance by the parties hereto or thereto of their respective obligations thereunder or the consummation of the other transactions contemplated thereby; or (ii) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any Developer Indemnitee is a party thereto; provided that such indemnity shall not, as to any Developer Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related reasonable expenses are finally judicially determined to have arisen by reason of the Developer Indemnitee's negligence, gross negligence, willful misconduct or fraud.

(d) The Developer agrees to indemnify the Tribal Parties, each Affiliate of the Tribal Parties and each of their respective Related Parties (each such Person being called an "Tribal Indemnitee") against, and to hold each Tribal Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable expenses, including reasonable counsel fees, charges and disbursements, incurred by or asserted against any Tribal Indemnitee arising out of, in any way connected with, or as a result of the gross negligence, willful misconduct or

fraud of Developer in connection with the performance of Developer's obligations hereunder; provided, that such indemnity shall not, as to any Tribal Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related reasonable expenses are finally judicially determined to have arisen by reason of the Tribal Indemnitee's negligence, gross negligence, willful misconduct or fraud.

(e) To the extent permitted by applicable law, each of the parties to this Agreement shall not assert, and hereby waives, any claim against any Developer Indemnitee or Tribal Indemnitee, as the case may be, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby.

(f) The provisions of this SECTION 10.06 shall remain operative and in full force and effect regardless of the expiration of the term of this Agreement, the consummation of the transactions contemplated hereby, the invalidity or unenforceability of any term or provision of this Agreement, or any investigation made by or on behalf of any parties to the Agreement. All amounts due under this SECTION 10.06 shall be payable on written demand therefor.

SECTION 10.07. Waivers; Amendment.

(a) No failure or delay of Developer in exercising any power or right hereunder or under any this Agreement or any agreement or instrument contemplated hereby shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of Developer hereunder and under the other agreements and instruments contemplated hereby are cumulative and are not exclusive of any rights or remedies which they would otherwise have. No waiver of any provision of this Agreement or any other agreement or instrument contemplated hereby or consent to any departure by the Tribal Parties therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) below, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice or demand on the Tribal Parties in any case shall entitle the Tribal Parties to any other or further notice or demand in similar or other circumstances.

(b) Neither this Agreement, any other agreement or instrument contemplated hereby nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Tribal Parties and Developer.

SECTION 10.08. IGRA Savings Clause. It is not the intent of the parties hereto that this Agreement, whether considered alone, or together with any other one or more documents, constitute a Management Contract within the meaning of IGRA or to allow any party other than the Tribe to have the "sole proprietary interest" in its Gaming Operations (a "SPI Violation"). Each of the Tribal Parties and Developer covenants that it shall not at any time assert, insist upon, or plead (as a defense or otherwise) or in any manner whatsoever claim or take the benefit

or advantage of, that this Agreement constitutes a Management Contract within the meaning of IGRA or that this Agreement constitutes a SPI Violation. To the extent that any Gaming Authority (other than a Tribal Gaming Authority) or any federal or state court issues a final and non-appealable order that this Agreement, or any provision hereof, constitutes a Management Contract or a SPI Violation, each and every provision hereof shall be interpreted in a manner that does not cause this Agreement to constitute a Management Contract or an SPI Violation, whether considered alone, or together with any other one or more documents. In no event shall any provision of this Agreement be applied, or deemed in effect or enforceable, to the extent such provision allows any action or influence by Developer or any other person that constitutes management of gaming in violation of IGRA or an SPI Violation. This Section shall survive as an agreement separate and apart from the remainder of this Agreement in the event of any determination that any provision of this Agreement causes the Agreement to constitute a Management Contract or an SPI Violation within the meaning of IGRA.

SECTION 10.09. Entire Agreement. This Agreement constitutes the entire contract between the parties relative to the subject matter hereof. Any previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement. Nothing in this Agreement, expressed or implied, is intended to confer upon any party other than the parties hereto and thereto any rights, remedies, obligations or liabilities under or by reason of this Agreement.

SECTION 10.10. Severability. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby. The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

SECTION 10.11. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original but all of which when taken together shall constitute a single contract, and shall become effective as provided in SECTION 10.04. Delivery of an executed signature page to this Agreement by facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

SECTION 10.12. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and are not to affect the construction of, or to be taken into consideration in interpreting, this Agreement.

SECTION 10.13. Tribal Matters. The parties hereto acknowledge and agree that this Agreement and the other agreements and instruments contemplated hereby are not intended, and shall not be interpreted or construed, to: (a) provide for a right on the part of Developer or any Related Party to manage (including, without limitation, the right to plan, organize, direct, coordinate or control) all or any part of the Gaming Activities; (b) constitute a "management contract" or a "collateral agreement" to a management contract within the meaning of IGRA; (c) deprive



the Tribe of the sole proprietary interest and responsibility for the conduct of any gaming activity within the meaning of IGRA; (d) provide for exclusive or nearly exclusive proprietary control over tribal lands, or (e) encumber tribal lands.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

**TRIBE:**

BIG SANDY RANCHERIA BAND OF  
WESTERN MONO INDIANS

By: Connie Lewis  
Name: Connie Lewis  
Title: Chairperson

**AUTHORITY:**

BIG SANDY RANCHERIA ENTERTAINMENT  
AUTHORITY

By: Pearl A. Hutchins  
Name: Pearl Hutchins  
Title: Vice-Chair

**DEVELOPER:**

BROWNSTONE LLC

By: [Signature]  
Name: RONALD J. TASSINARI  
Title: Chairman

SCHEDULE 5.01(e)

Litigation

1. *Michael Troilo v. Big Sandy Band of Western Mono Indians* (Case No. 03CECG02979 - Fresno County Superior Court; Case Nos. FO47981 and F04781 – 5<sup>th</sup> Appellate Dist. of Calif.).
2. Potential litigation challenging the Project that may be brought directly by Table Mountain Rancheria.