

JUN 21 2010

MANAGEMENT AGREEMENT
BETWEEN
THE SCOTTS VALLEY BAND OF POMO INDIANS
AND
SEMINOLE SV ENTERTAINMENT, LLC
JUNE 19, 2010

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT has been entered into as of June 19, 2010, by and between the **SCOTTS VALLEY BAND OF POMO INDIANS**, a federally recognized Indian tribe (the "Tribe"), and **SEMINOLE SV ENTERTAINMENT, LLC**, a Florida limited liability company (the "Manager"). The Tribe and Manager are each individually referred to herein as a "Party" and are collectively referred to herein as the "Parties."

RECITALS

A. The Tribe is a federally recognized Indian tribe recognized as eligible by the Secretary for the special programs and services provided by the United States to Indian tribes and is recognized as possessing powers of self-government.

B. The Tribe was restored to Federal recognition in 1992, and completely lacks a trust land base necessary to support Tribal economic development and the operation of Tribal governmental programs.

C. The Tribal Council has determined that the restoration of a Tribal trust land base, and the design, development, construction, furnishing and equipping of a permanent Class II and/or Class III gaming facility, including certain non-gaming amenities pursuant to and in accordance with the terms and provisions of the IGRA is an important Tribal government project which is intended to improve the economic condition of the Tribe and its members, increase Tribal revenues, enhance the Tribe's economic self-sufficiency, and enable the Tribe to better serve the social, economic, educational and health needs of the Tribe's members.

D. The Tribe has petitioned the United States to accept title to the Property (the legal description of which is set forth in Exhibit A to this Agreement) in trust for the benefit of the Tribe as part of the restoration of the Tribe's trust land base in connection with the restoration of the Tribe's status as a federally-recognized Indian tribe, within the scope and meaning of 25 U.S.C. § 2719(b)(1)(B)(iii), and upon the United States accepting title to the Property in trust for the benefit of the Tribe as restored lands (or otherwise in a manner so as to make the same gaming eligible), the Tribe shall possess sovereign powers over the Property pursuant to the Tribe's recognized powers of self-government, and the Property will constitute Indian lands of the Tribe under the IGRA.

E. In compliance with the IGRA, the Tribal Council has enacted or shall enact prior to the Effective Date (hereinafter defined) the Gaming Ordinance regulating the operation of Class II and Class III Gaming on the Property, subject to the provisions of the Gaming Ordinance and the Compact, and creating the Tribal Gaming Commission.

F. The Tribe, simultaneously with the execution hereof, has entered into a Development Agreement with Manager, whereby Manager, subject to satisfaction of all Legal Requirements, will assist the Tribe with the design, development, financing, and construction of the Gaming Facility.

G. Manager has agreed to certain terms and has represented to the Tribe that it has the managerial and financial capacity to provide and to endeavor to secure financing for the funds necessary to design, develop and construct the Gaming Facility, as defined herein, and to commence the operation of the Enterprise on the Property, and that the capital investment required and the income projections for the Gaming Facility requires the Term as set forth in this Agreement.

H. The Tribe is seeking technical experience and expertise for the operation of the Enterprise and instruction and training for its members in the operation of the Enterprise. The Tribal Council has determined that the instruction and training of the members of the Tribe in the management and operation of the Enterprise is an important Tribal government purpose which is intended to improve the economic condition of the Tribe and its members, increase Tribal revenues, enhance the Tribe's economic self-sufficiency, and enable the Tribe to better serve the social, economic, educational and health needs of the Tribe's members. Manager is willing, and has represented to the Tribe that it is able, to provide such experience and expertise and the training and instruction necessary for members of the Tribe to develop such experience and expertise.

I. The Tribe desires to grant Manager the exclusive right and obligation to develop, manage, operate and maintain the Enterprise as described in this Agreement, including the training of Tribal managers and others in the operation and maintenance of the Enterprise during the term of this Agreement. Manager wishes to perform these functions for the Tribe.

J. This Agreement is entered into pursuant to the IGRA. All Gaming conducted at the Gaming Facility will at all times comply with the IGRA and Applicable Law, including, without limitation, the Gaming Ordinance and, to the extent the same is consummated, the Compact.

K. The Tribal Council has determined that the capital investment required and the income projections for the Gaming Facility requires that this Management Agreement be in effect for the Term as set forth in this Agreement.

SECTION 1 **DEFINITIONS**

Except as explicitly defined herein, all capitalized words and terms used in this Agreement shall have the meanings set forth in this Section 1. All references in this Agreement to any agreement or instrument shall include such agreement or instrument as the same may be amended, restated, modified, supplemented, replaced or substituted from time to time. Such definitions shall be equally applicable to both singular and plural forms of any of the words and terms therein defined

“Affiliate” shall mean, as to Manager or the Tribe, any corporation, partnership, limited liability company, joint venture, trust, department, agency, instrumentality or individual controlled by, under common control with, or which controls, directly or indirectly, Manager or the Tribe. Affiliate does not include any entity or individual that controls, directly or indirectly, any member of the Manager.

“Agreement” shall mean this Management Agreement.

“Applicable Law” shall mean all laws of the Tribe, the United States, the State and any political subdivision thereof which apply to any transaction or activity contemplated under the terms and provisions of this Agreement, including, without limitation, the IGRA (including all regulations, rules or ordinances promulgated under any of the foregoing, or any amendments or successors in whole or in part to any of the foregoing), the Gaming Ordinance (including all successors thereto), and any law made applicable under the Compact, the Municipal Services Agreement, and any agreements the Tribe enters into pursuant to the terms and provisions thereof. Notwithstanding the foregoing, Applicable Law shall not include any of the foregoing that are not applicable to the Tribe, its Indian lands or any activities of the Tribe because of its sovereign status or sovereign immunity unless the Tribe has specifically agreed in writing to be bound by the same or as to which the Tribe has specifically waived in writing its sovereign immunity, provided, however, that this definition of Applicable Law is not intended and shall not be construed to amend, modify, alter or limit in any way the terms and provisions of Section 16 of this Agreement

“BIA” shall mean the Bureau of Indian Affairs, United States Department of the Interior.

“Capital Budget” shall have the meaning set forth in Section 3.10.

“Capital Replacement(s)” shall mean any alteration, repair, expansion, rebuilding or renovation of the Gaming Facility, and any replacement of Furnishings and Equipment, the cost of which is capitalized and depreciated, rather than being expensed, applying GAAP, as described in Section 3.10.

“Capital Replacement Reserve” shall mean the reserve described in Section 3.12, into which periodic contributions are paid pursuant to and in accordance with Section 3.13.

“Chairman -- NIGC” shall mean the Chairman of the National Indian Gaming Commission.

“Chief Financial Officer” shall mean the person, selected pursuant to and in accordance with Section 3.6.3, who shall be principally responsible for maintaining the financial records of the Enterprise. The Chief Financial Officer shall be an Enterprise Employee.

“Class II Gaming” shall mean Class II Gaming as defined in the IGRA.

“Class III Gaming” shall mean Class III Gaming as defined in the IGRA.

“Collateral Agreements” shall mean any agreements defined to be collateral agreements within the scope and meaning of 25 U.S.C. §2711(a)(3) and regulations issued thereto, 25 C.F.R. §502.5.

“Commencement Date” shall mean the first date that the Gaming Facility is open to the public and that Gaming is conducted in the Gaming Facility pursuant to the terms of this

Agreement, after which date the Gaming Facility shall remain continuously open during the Term of this Agreement. The Parties shall agree upon the Commencement Date, but the Commencement Date shall occur within five (5) days after the Completion Date.

“Compact” shall mean the Tribal-State Compact which the Tribe intends to enter with the State.

“Compensation” shall mean the direct salaries and wages paid to, or accrued for the benefit of, any Enterprise Employee, including incentive compensation, together with all fringe benefits payable to or accrued for the benefit of such executive or other employee, including employer’s contribution under F.I.C.A., unemployment compensation or other employment taxes, pension fund contributions, workers’ compensation, group life, accident and health insurance premiums and costs, and profit sharing, severance, retirement, disability, relocation, housing and other similar benefits.

“Completion Date” shall mean the date upon which Manager or the Tribe, as may be appropriate, receives:

(i) an architect’s certificate from the architect the Tribe engages, pursuant to and in accordance with the terms and provisions of this Agreement, having responsibility for the design and supervision of construction, certifying that the Gaming Facility has been fully constructed substantially in accordance with the Plans and Specifications;

(ii) certification from the Tribe and the designee of Manager having responsibility for compliance with any operational standards mandated by Applicable Law, including minimum internal control standards under regulations promulgated by the NIGC, stating that the Gaming Facility, as completed, is in substantial compliance with any such operational standards;

(iii) a permanent or temporary certificate of occupancy, if required, from any Government Authority permitting the use and operation of substantially all of the Gaming Facility in accordance with this Agreement, and all other requirements of any appropriate Governmental Authority necessary to open, occupy and operate the Gaming Facility, including but not limited to all requisite authority to include the sale of tobacco products and alcoholic beverages within the Gaming Facility, have been satisfied;

(iv) all operational systems have been adequately tested on a “dry-run” basis to the reasonable satisfaction of Manager and any appropriate Governmental Authority;

(v) Manager has conducted a “shake down” of the Gaming Facility operating and life safety systems; and

(vi) certificates of such professional designers, inspectors or consultants, or opinions of counsel, as each of Manager and Tribe may reasonably determine to be appropriate, verifying construction and furnishing of the Gaming Facility in compliance with all Legal Requirements and Applicable Law.

“Confidential Information” shall mean the information described in Section 8.23.1.

“Constitution” shall mean the Constitution of The Scotts Valley Band of Pomo Indians, as approved by the members of the Tribe, in effect on the Execution Date.

“Construction and Development Costs” shall mean any and all costs and expenses denominated as Construction and Development Costs in the Development Agreement.

“Control” means the direct or indirect beneficial ownership of 25% or more of the ownership interests of the specified Person.

“Deadlock” shall mean a circumstance in which Manager proposes to take any action requiring the approval of the Tribal Council, and Manager is unable to obtain such approval.

“Depository Account” shall mean the bank account described in Section 3.18.2.

“Developer” shall mean Manager acting as Developer under the terms and provisions of the Development Agreement.

“Developer Fee” shall have the meaning set forth in the Development Agreement.

“Development Agreement” shall mean that certain Development Agreement, of even date herewith, by and between Seminole SV Entertainment, LLC and the Tribe. For purposes hereof, “Development Agreement” expressly and specifically includes any and all other contracts, agreements, instruments, documents or understandings executed or delivered pursuant to or in connection with the Development Agreement or the transactions contemplated thereunder, including, without limitation: the Interim Promissory Note, the Self-Sufficiency Note, the Tribal Member Note and the Exclusivity Waiver Note.

“Disbursement Account” shall mean the bank account described in Section 3.18.3.

“Effective Date” shall mean the date five days following the date on which all of the following listed conditions are satisfied:

- (i) the expiration of thirty (30) days after the Secretary has published in the Federal Register a notice of his or her intention to accept title to the Property in trust for the benefit of the Tribe (as gaming eligible), and no Court of competent jurisdiction has enjoined the Secretary from accepting title to the Property in trust for the benefit of the Tribe, or any such injunction has been lifted or dissolved and the Order lifting or dissolving such injunction is a final, non-appealable Order, and the Property is accepted into trust, as gaming eligible;
- (ii) written approval of this Agreement is granted by the Chairman -- NIGC and/or the BIA, as may be required;

- (iii) written approval of the Loan Agreement, the Development Agreement and the Loan Agreement is granted by the Chairman -- NIGC and/or the BIA, if required;
- (iv) Manager has reasonably satisfied itself as to the Gaming Ordinance and any modifications or amendments thereto and written approval of a Gaming Ordinance is granted by the Chairman -- NIGC and/or the BIA, if required;
- (v) written confirmation, if required, that background investigations of Manager and Developer have been satisfactorily completed pursuant to Applicable Law;
- (vi) Manager has received a certified copy of the Gaming Ordinance and the Tribal Resolutions applicable to the Gaming Facility adopted by the Tribe in accordance with the Tribe's governing documents authorizing or ratifying the execution and delivery of this Agreement, the Development Agreement and the Loan Agreement;
- (vii) Manager has reasonably satisfied itself as to the proper ownership and control of the Property and its suitability for construction and operation of the contemplated Gaming Facility, and the satisfaction of all Legal Requirements necessary for the lawful conduct and operation of the Gaming Facility in accordance with the this Agreement have been met and satisfied, including, without limitation, a determination by the NIGC and/or the BIA, as appropriate and in form and substance acceptable to Manager in its reasonable discretion, that the Property qualifies as "Restored Lands" within the scope and meaning of 25 U.S.C. § 2719(b)(1)(B)(iii);
- (viii) receipt by Manager or Tribe, as appropriate, of all applicable licenses required from any Governmental Authority pursuant to Applicable Law for or related to development, construction. operation or management of the Gaming Facility; and
- (ix) receipt by Manager of the Tribe's approval of the Plans and Specifications for the Gaming Facility in accordance with the terms of the Development Agreement.

The Parties agree to cooperate and to use their best efforts to satisfy all of the above conditions at the earliest practicable date, pursuant and subject to the terms and provisions of this Agreement. Manager agrees to memorialize the satisfaction of each of (vi) and (vii), as well as the Effective Date, in writings signed by Manager and delivered to the Tribe. The Parties agree to cooperate and use their best efforts to prepare and submit any and all documentation required under 25 U.S.C. §2711 or otherwise necessary to be submitted to any Governmental Authority to satisfy any of the foregoing conditions or any Legal Requirements. Manager and the Tribe shall also promptly provide each other with copies of any communications to or from any Governmental Authority relating to such submittals, and shall cooperate and use their best efforts to consult with each other prior to communications, whether oral or written, with such Governmental Authority. Notwithstanding any term or provision of this Agreement or the Development Agreement to the contrary, the Parties agree to pursue any administrative and judicial processes available under Applicable Law to secure the satisfaction of the conditions to the Effective Date.

“Emergency Condition” shall have the meaning set forth in Section 3.11.

“Enterprise” shall mean the Class II and/or Class III Gaming business owned and operated by the Enterprise Entity, in the Gaming Facility, and which shall include, without limitation, all other non-Gaming amenities conducted or operated on the Property, but excluding activities taking place on the Property but located outside of, and not directly or indirectly related to the Gaming Facility.

“Enterprise Bank Accounts” shall mean those accounts described in Section 3.18.

“Enterprise Employee” shall mean an employee of the Enterprise Entity who is assigned to work on the Property, in the Gaming Facility in furtherance of the Enterprise, and such term includes Tribe Designated Employees, Key Enterprise Employees, and Key Employees. Such term does not include Off-Site Employees and any Manager Employee.

“Enterprise Employee Policies” shall mean those employee policies described in Section 3.6.2.

“Enterprise Entity” shall mean a corporation formed, controlled and owned by the Tribe in its discretion pursuant to Section 17 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended, or another entity formed by the Tribe in compliance with Applicable Law, to own and/or operate the Gaming Facility and the Enterprise. If no Enterprise Entity exists at any time, the term “Enterprise Entity” shall mean the Tribe, and in this Agreement any references to the Tribe when an Enterprise Entity exists that should be applicable to the Enterprise Entity shall be deemed to refer to the Enterprise Entity rather than to the Tribe.

“Enterprise Name” shall have the meaning set forth in Section 6.1.

“Enterprise Operating Standards” shall mean a proper, efficient and competitive manner consistent with the standard of services, maintenance, standard of operation, cleanliness, degree of training and retraining for employees, guest experience and other similar considerations currently applicable to the Seminole Hard Rock casino located in Tampa, Florida as of the date this Agreement is signed by the Parties.

“Execution Date” shall mean the date upon which both Parties are deemed to have executed this Agreement.

“Excess Capital Improvement” shall have the meaning set forth in Section 3.23.

“Exclusivity Waiver Note” shall have the meaning set forth in the Development Agreement.

“Fiscal Year” shall mean the period commencing on January 1 of each year and ending on December 31 of that year, which is also the accounting year for the Tribe, except that the first Fiscal Year shall be that period commencing with the Commencement Date and ending on the

last day of the calendar year in which the Commencement Date occurs (the "Interim Period"); provided, however, that if the Commencement Date occurs after January 1 of the calendar year, (a) for purposes of calculating the Management Fee, the Interim Period shall be deemed to be a Fiscal Year; and (b) unless otherwise provided herein, for all other purposes in this Agreement, the Interim Period shall be deemed to be a Fiscal Year.

"Furnishings and Equipment" shall mean all furniture, furnishings and equipment required for the operation of the Gaming Facility in accordance with the standards set forth in this Agreement or as may be necessary to satisfy any Legal Requirement or Applicable Laws, including, without limitation:

- (i) cashier, money sorting and money counting equipment, surveillance and communication equipment and security equipment;
- (ii) electronic lottery terminals, video games of chance, table games, bingo blowers & equipment, electronic displays, Class II pull-tab dispensers, table games, pari-mutuel betting equipment, and other Class II and Class III gaming equipment, permitted under Applicable Law;
- (iii) office furnishings and equipment;
- (iv) specialized equipment necessary for the operation of any portion of the Gaming Facility for accessory purposes, including equipment for entertainment facilities, hospitality facilities, kitchens, laundries, dry cleaning, cocktail lounges, restaurants, public rooms, commercial and parking spaces, and recreational facilities;
- (v) all decor, special effects, and artwork;
- (vi) other electronic equipment, interior plantings, interior water features, artifacts and artwork, and interior and exterior graphics;
- (vii) communications equipment;
- (viii) point-of-sale accounting equipment, front and back office accounting, computer, duplicating systems and office equipment;
- (ix) cleaning and engineering equipment and tools; and
- (x) all other furnishings and equipment, including built-in furniture, carpeting, draperies, decorative millwork, decorative lighting, doors, cabinets, hardware, partitions (but not permanent walls), signage, hereafter located and installed in or about the Gaming Facility which are used in the operation of the Gaming Facility in accordance with the standards set forth in this Agreement, excluding, however, any Gaming equipment and personal property that is owned by subtenants, licensees, concessionaires or contractors.

“Gaming” shall mean any and all activities defined as Class II and/or Class III Gaming under IGRA.

“Gaming Facility” shall mean the buildings, structures and improvements located on the Property used by the Tribe or any instrumentality thereof in connection with the conduct of Gaming, or the operation, maintenance or management of the Enterprise, and all fixtures, Furnishings and Equipment attached thereto, forming a part of, or necessary for the operation of the Gaming Facility.

“Gaming Ordinance” shall mean an approved Tribal Gaming Ordinance pursuant to IGRA, and any approved amendments thereto enacted or to be enacted by the Tribe pursuant to Section 2.5 hereof or otherwise, which authorizes and regulates Class II and/or Class III Gaming and/or table games on Indian lands, including the Property, subject to the government power of the Tribe.

“GAAP” shall mean those principles defined by the Financial Accounting Standards Board as generally accepted accounting principles.

“General Manager” shall mean the person selected pursuant to the procedure described in section 3.6.3 of this Agreement, and employed by the Enterprise or the Enterprise Entity to direct the Gaming operations of the Enterprise and such other aspects of the Enterprise as are the responsibility of Manager under this Agreement. The General Manager shall be an Enterprise Employee; provided, however, that Manager shall have the right to appoint and employ the General Manager. The person selected by Manager to be the General Manager of the Gaming Facility shall be subject to the approval of the Enterprise Entity, which shall not be unreasonably withheld, conditioned or delayed.

“Government Authority or Governmental Authority” shall mean any federal, state, county or local government body or a governing body of the Tribe having jurisdiction over the Gaming Facility, the Enterprise, the Property, the Furnishings and Equipment, the Tribe, any Enterprise Entity, the conduct of Gaming at the Gaming Facility, this Agreement, the Loan Agreement, the Development Agreement, or any transaction contemplated hereunder or thereunder, pursuant to Applicable Law.

“Gross Non-Gaming Revenue” shall mean all revenues of any nature derived directly or indirectly from the Enterprise which do not constitute Gross Gaming Revenue (Win). Gross Non-Gaming Revenue shall include, without limitation, food and beverage sales, and other rental or other receipts from lessees, sublessees, licensees or concessionaires; provided that the following shall be excluded from Gross Non-Gaming Revenue:

- (i) any tips, gratuities or service charges added to a customer’s bill, except to the extent retained by the Enterprise;
- (ii) any credits or refunds made to customers, guests or patrons;

(iii) any sums and credits received by the Enterprise for lost or damaged merchandise;

(iv) any sales taxes, excise taxes, tourist taxes or charges imposed by a Governmental Authority and received from patrons, or as a part of the sales price of any goods, services, or displays, including gross receipts, admission, cabaret and similar taxes, and passed on to a governmental or quasi governmental entity;

(v) any proceeds from the sale or other disposition of furnishings and equipment or other capital assets;

(vi) any fire and extended coverage insurance proceeds other than for business interruption;

(vii) any condemnation awards other than for temporary condemnation;

(viii) any proceeds of financing or refinancing;

(ix) any interest, gain or other investment income on amounts held in any reserve fund or bank account(s);

(x) the retail value of any Promotional Allowances;

(xi) revenues from lessees, sublessees, and licensees and concessionaires which are subsidiaries or Affiliates of Manager;

(xii) revenues generated from the redemption of "slot points" (it being understood however that the actual cost corresponding to the goods or services provided in exchange for the redemption of the slot points shall constitute an Operating Expense); and

(xiii) any taxes the Tribe is allowed to assess pursuant to Section 7.

Gross Non-Gaming Revenues shall be reduced by the amount of any credits or refunds for items previously included in Gross Gaming Revenues, made to customers, guests or patrons.

"Gross Gaming Revenue (Win)" shall mean the net win from Class II or Class III games, which is the difference between Gaming wins and losses before deducting costs and expenses determined in accordance with GAAP: provided that the following shall be excluded from Gross Gaming Revenue:

(i) any tips, gratuities or service charges added to a customer's bill, except to the extent retained by the Enterprise;

(ii) any sums and credits received by the Enterprise for lost or damaged merchandise;

(iii) without duplication of any Operating Expense, any sales taxes, excise taxes, tourist taxes or charges imposed by a Governmental Authority and received from patrons, or as a part of the sales price of any goods, services, or displays, including gross receipts, admission, cabaret and similar taxes, and passed on to a governmental or quasi governmental entity;

(iv) any proceeds from the sale or other disposition of furnishings and equipment or other capital assets;

(v) any fire and extended coverage insurance proceeds other than for business interruption;

(vi) any condemnation awards other than for temporary condemnation;

(vii) any proceeds of financing or refinancing;

(viii) any interest or other investment income on amounts held in any reserve fund or bank account(s);

(ix) the retail value of any Promotional Allowances;

(x) any taxes the Tribe is allowed to assess pursuant to Section 7; and

(xi) revenues generated from the redemption of "slot points" (it being understood however that the actual cost corresponding to the goods or services provided in exchange for the redemption of the slot points shall constitute an Operating Expense).

Gross Gaming Revenues shall be reduced by the amount of any credits or refunds, for items previously included in Gross Gaming Revenues made to customers, guests or patrons.

"Gross Revenue" shall mean the sum of "Gross Gaming Revenue (Win)" and "Gross Non-Gaming Revenue."

"House Bank" shall mean the amount of cash, chips, tokens and plaques that Manager from time to time determines necessary to have at the Gaming Facility daily to meet its cash needs.

"IGRA" shall mean the Indian Gaming Regulatory Act of 1988, PL 100-497, 25 U.S.C. §2701 et seq. as same may, from time to time, be amended.

"Indemnified Parties" shall mean, with respect to a Party, its subsidiaries, affiliates and their respective officers, partners, members, managers, directors, agents, shareholders and employees.

"Internal Control Systems" shall mean the systems described in Section 3.16.

“Interim Loan” shall mean the funds Developer advances to or on behalf of the Tribe as a loan pursuant to and in accordance with the terms and provisions of this Agreement, the terms and provisions of which are contained in the Interim Promissory Note.

“Interim Promissory Note” shall mean one or more promissory notes executed by the Tribe in favor of Developer evidencing the Interim Loan Developer has made and will make to the Tribe pursuant to and in accordance with the Development Agreement. Some or all of the obligations evidenced by the Interim Promissory Note may be subsumed within the Loan as provided in the Development Agreement. For purposes hereof, “Interim Promissory Note” expressly and specifically includes any and all other contracts, agreements, instruments, financing statements, documents, writings or understandings executed or delivered pursuant to or in connection with the Interim Loan or the Interim Promissory Note, provided, however that none of the Self-Sufficiency Note, the Tribal Member Note or the Exclusivity Waiver Note shall be deemed included within the Interim Promissory Note.

“Key Employee” shall mean an employee of the Enterprise Entity who is assigned to work on the Property, in the Gaming Facility in furtherance of the Enterprise, and serves as General Manager, Chief Financial Officer, Marketing Director or Security Director; provided, however, that Manager shall have the right to appoint and employ the General Manager and Chief Financial Officer, subject to the approval of the Enterprise Entity, which shall not be unreasonably withheld, conditioned or delayed.

“Key Enterprise Employee” shall mean an employee of the Enterprise Entity who is assigned to work on the Property, in the Gaming Facility in furtherance of the Enterprise, and serves in any function, role or capacity described in the Tribe’s Gaming Ordinance as a “Key Employee”, including, but not limited to bingo caller, counting room supervisor, chief of security, custodian of gaming supplies or cash, floor manager, pit boss, dealer, croupier, approver of credit, or custodian of gaming devices. If not otherwise included, persons whose total cash compensation is in excess of [] per year, and the four (4) most highly compensated persons in the Enterprise shall be Key Enterprise Employees unless such persons are Key Employees as defined in this Agreement.

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“Legal Requirements” shall mean any and all approvals, consents, authorizations, permits, licenses, certifications of any nature from any Governmental Authority pursuant to Applicable Law necessary for: (i) this Agreement, the Loan Agreement, or the Development Agreement to constitute valid, binding obligations of the Parties enforceable pursuant to the terms and provisions hereof or thereof, (ii) the consummation of any transaction contemplated under this Agreement, the Loan Agreement, the Development Agreement, or the performance of any obligation either Party has assumed and agreed to perform hereunder or thereunder, and (iii) the design, development, financing, construction, maintenance, management and operation of the Gaming Facility and the Enterprise in compliance with all Applicable Laws. Notwithstanding the foregoing, Legal Requirements shall not include any of the foregoing that are not applicable to the Tribe, its Indian lands or its activities because of its sovereign status or sovereign immunity unless the Tribe has specifically agreed in writing to be bound by the same or as to which the Tribe has specifically waived in writing its sovereign immunity, provided, however, that this definition of Legal

Requirements is not intended and shall not be construed to amend, modify, alter or limit in any way the terms and provisions of Section 16 of this Agreement.

“Lender” shall mean the person or entity which makes the Loan to the Tribe or the Enterprise pursuant to the terms and provisions of the Loan Agreement. The term “Lender” shall include Manager or an Affiliate thereof if and to the extent Manager or an Affiliate shall become a source of financing under the Loan Agreement.

“Liquidated Damages” shall mean the amount of agreed upon liquidated damages equal to ninety percent (90%) of the figure calculated by multiplying (i) the average Management Fee due and payable to Manager pursuant to and in accordance with the terms and provisions of this Agreement for the twelve (12) months immediately preceding the month in which the Event of Default occurred, and (ii) the number of months remaining during the Term (including the month in which the Event of Default occurred).

In the event that the effective date of such termination occurs prior to the approval of the Operating Budget and Annual Plan for the first full year of operations after the Commencement Date, the liquidated damages amount shall be calculated based on the Management Fee payable in respect of projected Net Revenues of [] b4

In the event that the effective date of such termination occurs after the approval of the Operating Budget and Annual Plan for the first full year of operations after the Commencement Date but prior to the Commencement Date, the liquidated damages amount shall be calculated upon the Management Fees payable in respect of the budgeted Net Revenues set forth in the Operating Budget and Annual Plan for the first full year (or portion of such year) of operations.

In the event that the effective date of such termination occurs after the Commencement Date but prior to the end of the first full year of operations after the Commencement Date, the liquidated damages amount shall be calculated upon the Management Fees payable in respect of the budgeted Net Revenues set forth in the Operating Budget and Annual Plan for the first full year of operations.

“Loan” shall mean the loan to the Tribe or the Enterprise Entity to be made pursuant to the Loan Agreement.

“Loan Agreement” shall mean the loan agreement to be entered into between the Tribe or the Enterprise Entity and Lender, in an amount sufficient to fund (i) the repayment of all Interim Loans, (ii) all Construction and Development Costs, (iii) all costs incurred by the Tribe or the Enterprise Entity in entering into the Loan Agreement, including, without limitations, loan fees, attorney fees, all other costs, fees and expenses however designated, incurred pursuant to and in accordance with the Loan Agreement, and (iv) if Manager or an Affiliate thereof is a party to the Loan Agreement, such costs incurred by Manager or its Affiliate as would customarily be charged by the lender to a commercial borrower. For purposes hereof, “Loan Agreement” expressly and specifically includes any and all other contracts, agreements, instruments, financing statements, documents or understandings executed or delivered pursuant to or in connection with the Loan Agreement, or as a condition to Lender’s making the Loan, or any disbursements of the proceeds

of the Loan, including, without limitation: (i) the Note, and (ii) the Security Agreement. The Tribe shall enact such laws and execute such documents as may be necessary to establish and create an enforceable purchase money security interest for the benefit of the Lender, subject to and consistent with Section 16.1.7 hereof.

“Local Community Members” shall have the meaning described in Section 3.6.10 (iv).

“Management Agreement” shall mean this Agreement, and may be referred to herein as this “Agreement” or this “Management Agreement.”

“Management Fee” shall mean [] percent [] of Net Revenues, payable at the times and with the limitations specified in Sections 5.4 and 5.5. In addition, if in any period the Tribe or the Enterprise Entity is required under the terms of the Compact to pay any amount in excess of twelve percent (12%) of Gross Gaming Revenues (Win), the Management Fee otherwise applicable shall be reduced by [] percent [] of the dollar amount by which such Compact payments exceed [] percent [] of Gross Gaming Revenues (Win); provided, however, that such reduction of the Management Fee shall not exceed [] DOLLARS [] in any Fiscal Year. The Management Fee is subject to annual reconciliation as provided in Section 5.4

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“Manager” shall mean Seminole SV Entertainment, LLC.

“Manager Employee” shall mean, if employed by Manager, its Affiliate or its members, the General Manager and/or the Chief Financial Officer of the Enterprise who is assigned to work on the Property in the Gaming Facility in furtherance of the Enterprise, and who may be employed by Manager, its Affiliate or its members.

“Marketing Services” shall have the meaning set forth in Section 3.7.1.

“Minimum Balance” shall mean the amount described in Section 3.18.1.

“Minimum Guaranteed Monthly Payment” shall mean that payment due the Tribe each month commencing in the month after the Commencement Date occurs in accordance with 25 U.S.C. § 2711(b)(3) and Section 5.5 hereof.

“Monthly Tribal Member Payment” shall have the meaning set forth in the Development Agreement.

“Municipal Services Agreement” shall mean any contract or agreement between the Tribe or the Enterprise Entity and any Governmental Authority under which the Governmental Authority provides any services or facilities to the Enterprise of a type typically provided by government entities to residents and businesses or under which the Tribe or the Enterprise Entity agrees to provide compensation for such services or facilities or agrees to provide payments in respect of mitigation of impacts of the construction or operation of the Gaming Facility.

“National Environmental Policy Act” or “NEPA” shall mean the National Environmental Policy Act, 42 U.S.C. §4331 *et seq.*, and all federal Regulations promulgated with respect thereto, as the same may, from time to time, be amended.

“National Indian Gaming Commission” or “NIGC” shall mean the commission established pursuant to 25 U.S.C. § 2704.

“Native Americans” shall mean persons who are members of any federally recognized Indian tribe or who are designated as Native Americans by the Tribe for purposes of this Agreement.

“Net Revenues” shall mean the sum of “Net Revenues (Gaming)” and “Net Revenues (Non-Gaming).”

“Net Revenues (Gaming)” shall mean Gross Gaming Revenue (Win) of the Enterprise, less all Gaming related Operating Expenses and non-operating expenses consistent with professional accounting pronouncements, excluding management fees.

“Net Revenues (Non-Gaming)” shall mean all Gross Non-Gaming Revenue of the Enterprise, less all Non-Gaming related Operating Expenses.

“Note” shall mean the promissory note or notes to be executed by the Tribe or the Enterprise Entity pursuant to the Loan Agreement.

“Operating Budget and Annual Plan” shall mean the operating budget and plan described in Section 3.9.

“Off-Site Employee” shall mean employees of Manager as described in Section 3.6.4.

“Operating Expenses” shall mean all expenses necessary on an emergency basis to protect the Enterprise or the interests of the Tribe, and all expenses of the operation of the Enterprise, as provided for in the Operating Budget and Annual Plan, determined pursuant to GAAP, including but not limited to the following. Operating Expenses as so defined are used for the purpose of determining the Net Revenues on which the Management Fee is based.

(i) the payment of salaries, wages, and benefit programs for (a) Enterprise Employees, (b) Tribe Designated Employees, and (c) Manager Employees.

(ii) Operating Supplies for the Enterprise;

(iii) utilities;

(iv) repairs and maintenance of the Gaming Facility (excluding Capital Replacements);

(v) interest on the Note;

- (vi) interest payments on the Interim Promissory Note;
- (vii) interest on installment contract purchases or other interest charges on debt approved by the Tribe;
- (viii) insurance and bonding;
- (ix) advertising and marketing, including busing and transportation of patrons to the Gaming Facility;
- (x) accounting, legal and other professional fees;
- (xi) security costs;
- (xii) reasonable travel expenses for officers and employees of the Enterprise, Manager or its affiliates or members, to the extent approved by the Tribe, to inspect and oversee the Enterprise, subject to the budget agreed upon by the Tribe;
- (xiii) unless required to be amortized or depreciated under GAAP, lease payments for Furnishings and Equipment to the extent approved by the Tribe and leasing commissions and costs of tenant improvements;
- (xiv) trash removal;
- (xv) costs of goods sold;
- (xvi) other expenses designated as Operating Expenses in accordance with the accounting standards as referred to in Section 3.20.4;
- (xvii) expenses specifically designated as Operating Expenses in this Agreement to the extent consistent with GAAP;
- (xviii) depreciation and amortization of the Gaming Facility (as it exists as of the Commencement Date) based on an assumed 5 year life and depreciation and amortization of all other assets (as they exist as of the Commencement Date), and depreciation and amortization of Capital Replacements and of any lump-sum or non-recurring payments to the State or city or county or other local government made by or on behalf of the Enterprise or the Tribe or the Enterprise Entity pursuant to the Compact or Municipal Services Agreement or similar agreement or arrangement, all in accordance with GAAP;
- (xix) leasing commissions, costs of tenant improvements and lease payments for Fixtures and Equipment or amortization or depreciation thereof where GAAP does not permit them to be expensed, and depreciation and amortization of Capital Replacements and of assets acquired after the Commencement Date, all in accordance with GAAP; with

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such determination to be made monthly on a provisional basis and then finally determined on an annual basis, and with such final amount to be used in the re-computation of the Management Fee under Section 5.4.

(xx) recruiting and training expenses, including costs and expenses incurred in connection with the program provided for in Section 3.6.10 (iii);

(xxi) fees due to the NIGC under the IGRA;

(xxii) any periodic or recurring payments to the State or city or county or other local government made by or on behalf of the Enterprise or the Tribe pursuant to any Compact or Municipal Services Agreement or similar agreement or arrangement;

(xxiii) any budgeted charitable or community benefit contributions or payments (including payments to or for schools and non-governmental agencies or entities) by the Enterprise which are approved by the Tribe;

(xxiv) expenses and costs related to the operation of the Gaming Commission as provided in Section 3.6.6;

(xxv) any amounts paid to or for the benefit of non-gaming tribes as revenue sharing or similar payments; and

(xxvi) the Tribal Administrative Fee.

“Operating Supplies” shall mean all consumable items, used in, or held in storage for use in (or, if the context so dictates, required in connection with), the operation of the Gaming Facility in accordance with the provisions of this Agreement, including, without limitation, food and beverages (alcoholic and non-alcoholic) and other consumable items used in the operation of a gaming facility, such as playing cards, tokens, chips, pull-tabs, bingo paper, plaques, fuel, soap, cleaning materials, matches, paper goods, stationary and all other similar items.

“Plans and Specifications” shall mean the final Plans and Specifications approved for the Gaming Facility by the Developer and the Tribal Council as described in the Development Agreement.

“Prohibited Person” shall have the meaning described in Section 9.5

“Promotional Allowances” shall mean the retail value of complimentary food, beverages, merchandise, and tokens for gaming, provided to patrons as promotional items.

“Property” shall mean the land identified in Section 1.8.1 of the Development Agreement, the legal description of which is set forth in Exhibit A to this Agreement.

“Secretary” shall mean the Secretary of the Interior of the United States.

“Security Agreement” shall mean that agreement or agreements to be entered into between Manager and/or the Lender and the Tribe or the Enterprise Entity which grants Manager and/or Lender a purchase money security interest in the Furnishings and Equipment and the Net Revenue to secure performance of the obligations the Tribe or the Enterprise Entity has assumed and agreed to perform under the Note, the Loan Agreement and any other document the Tribe or the Enterprise Entity executes pursuant to the Loan Agreement. For purposes hereof, “Security Agreement” expressly and specifically includes any and all other contracts, agreements, instruments, financing statements, documents or understandings executed or delivered pursuant to or in connection with the Tribe or the Enterprise Entity granting Manager and/or Lender a purchase money security interest in the Furnishings and Equipment and the Net Revenue to secure performance of the obligations the Tribe or the Enterprise Entity has assumed and agreed to perform under the Note and the Loan Agreement.

“Self-Sufficiency Note” shall have the meaning set forth in the Development Agreement.

“Start-up Budget” shall have the meaning described in Section 3.8.

“Start-up Expenses” shall have the meaning described in Section 3.8.

“State” shall refer to the State of California.

“Term” shall mean the term of this Agreement as described in Section 2.2.

“Tribal Administrative Fee” shall mean the fee payable to the Tribe as described in Section 3.6.6.

“Tribal Council” shall mean the duly elected Tribal Council of the Tribe described in the Tribe’s Constitution.

“Tribal Executive Manager” shall mean any person designated as such pursuant to Section 3.6.13.

“Tribal Distribution Payment” shall have the meaning set forth in Section 5.4.

“Tribal Gaming Commission” or **“TGC”** shall mean the Tribal body created pursuant to the Gaming Ordinance to regulate the Class II and/or Class III Gaming in accordance with the Compact, the IGRA and the Gaming Ordinance.

“Tribal Member Note” shall have the meaning set forth in the Development Agreement.

“Tribe” shall mean The Scotts Valley Band of Pomo Indians, a federally recognized Indian tribe.

“Tribe Designated Employee” shall mean a person designated as a Tribe Designated Employee as described in Section 3.6.13.

SECTION 2
COVENANTS

In consideration of the mutual covenants contained in this Agreement, the Parties agree and covenant as follows:

2.1 Engagement of Manager. The Tribe hereby retains and engages Manager as the Tribe's exclusive advisor and as manager of the Enterprise pursuant to the terms and conditions of this Agreement, and Manager hereby accepts such retention and engagement.

2.2 Term. The Term of this Agreement shall begin on the Commencement Date and shall continue for a period of [] years after the Commencement Date unless earlier terminated pursuant to the provisions of this Agreement.

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2.3 Status of Property. The Tribe represents and covenants that as of the Effective Date, the Property shall constitute Indian lands of the Tribe, by virtue of being restored lands or otherwise as determined by the Secretary, within the meaning of IGRA, and is eligible for Gaming within the scope of IGRA, and the Tribe will use commercially reasonable best efforts to maintain the Property throughout the Term as Indian lands of the Tribe eligible for Gaming. The Tribe covenants, during the Term hereof and provided Manager performs all its material obligations under this Agreement, to use its commercially reasonable best efforts to assure that Manager shall and may peaceably have all access to and presence on the Property and in the Gaming Facility necessary for it to carry out its responsibilities in accordance with the terms of this Agreement, free from molestation, eviction and disturbance by the Tribe or by any other person or entity acting under color or claim of Tribal authority; provided, however, that such right of access to and presence on the Property and in the Gaming Facility shall cease upon the termination of this Agreement pursuant to its terms, and further provided that such right of access to and presence on the Property or in the Gaming Facility shall cease upon the revocation of Manager's gaming license. However, nothing in this Agreement, including this Section, shall prevent the Tribe from enforcing any of its Tribal codes for the purposes of reasonably protecting public health and safety and integrity of the gaming operations, provided that any action taken with respect to Manager is in compliance with this Agreement.

2.4 Tribe and Manager Compliance with Law; Licenses. The Tribe and Manager covenant and agree that all Gaming in the Gaming Facility will be conducted in compliance with all Legal Requirements and Applicable Law.

2.5 Tribal Ordinances. The Tribe acknowledges that the Tribe must amend its Gaming Ordinance and enact new ordinances to address, at a minimum, the Tribe's (i) contract bidding process and requirements, (ii) adoption of the Uniform Commercial Code of the State or other similar code for the creation, protection and enforcement of security interests, (iii) rules for the handling and characterization of Net Revenues generated from any Class II or Class III Gaming activity, (iv) all requisite authority to include the sale of tobacco products and alcoholic beverages at the Gaming Facility and (v) any other matters that Manager may reasonably request for the management of the Gaming Facility in accordance with industry standards and this

Agreement. Any amendments made to the Gaming Ordinance will be undertaken in the manner required by the Constitution and Applicable Law and shall represent a legitimate effort to ensure that Gaming is conducted pursuant to this Agreement and in a manner that adequately protects the environment, the public health and safety, and the integrity of the Gaming Facility. Any amendments proposed to be made to the Gaming Ordinance, and any newly proposed ordinances or revisions to existing ordinances that may be required or enacted to further the purposes of this Agreement, shall be subject to a ten (10) day period of review and comment by Manager. The adoption of any amendments to the Gaming Ordinance or any other tribal codes or resolutions that would materially and adversely affect Manager's or Lender's rights under this Agreement, the Loan Agreement, or the Development Agreement shall constitute an Event of Default hereunder if the same are not repealed or revoked within the time specified in Section 10.5. The Tribe agrees that it will not amend its Constitution, Gaming Ordinance, or any other ordinance or law, or enact any new ordinances or laws so as to affect the jurisdiction, power, composition, independence, or by exercise of the police power or otherwise, act to modify, amend, or in any manner impair the Tribe's obligations under this Agreement, the Loan Agreement or the Development Agreement, provided that nothing herein shall prevent the Tribe from adopting regulations protecting the health, safety, and welfare of members of the Tribe and the public.

2.6 Compliance with Compact. The Parties shall at all times comply with the provisions of the Compact.

2.7 Fire and Safety. Manager shall use its commercially reasonable efforts to assure that the Gaming Facility shall be constructed and maintained in compliance with all fire and safety statutes, codes, and regulations which would be applicable if the Gaming Facility were located outside of the jurisdiction of the Tribe although those requirements would not otherwise apply within that jurisdiction. Nothing in this Section shall grant any jurisdiction to the State of California or any political subdivision thereof over the Property, the Enterprise or the Gaming Facility. The Tribe or the Enterprise Entity shall be responsible for obtaining fire protection and police services for the Property and the Gaming Facility by agreement or other arrangement with the City of Richmond, Contra Costa County or other Governmental Authorities, including the Tribe. Manager shall be responsible for enforcing such agreements and arrangements for the benefit of the Enterprise and for causing the Enterprise Entity to perform its obligations under such agreements or arrangements. Manager shall (i) assist in negotiating the terms and provisions of such agreements, and (ii) be provided with drafts of the agreements and a ten (10) day period of Manager review.

2.8 Compliance with the National Environmental Policy Act. The Tribe shall be responsible to supply the NIGC with all information necessary for the NIGC to comply with any regulations of the NIGC issued pursuant to NEPA. Manager shall supply any information requested by the Tribe to comply with this provision.

2.9 Insurance Requirements. The Tribe shall comply with the minimum insurance requirements in Section 3.19 and as set forth on the attached Exhibit E.

2.10 Commencement Date. Manager shall memorialize the Commencement date in a writing signed by Manager and delivered to the Tribe and to the Chairman -- NIGC.

SECTION 3
BUSINESS AFFAIRS

3.1 Manager's and Tribe's Authority and Responsibility.

3.1.1 General Provisions. Subject to the requirements of Section 3.1.2 and to any other specific requirements of this Agreement, Manager shall, conduct and direct, for the account of the Tribe and as its agent, all business affairs in connection with the day-to-day operation, management and maintenance of the Enterprise and the Gaming Facility, including the establishment of operating days and hours.

Specifically, Manager shall have the responsibility for the following enumerated matters, subject to any provisions in any approved Annual Plan and Operating Budget and to the requirements of the Enterprise Employee Policies and to any other specific requirements of this Agreement:

- Maintenance and improvement of the Gaming Facility,
- The provision or obtaining of operating capital pursuant to the provisions of Section 3.2.1, 3.8 and 8.12 of this Agreement,
- Establishment of operating days and hours,
- Hiring, firing, training and promoting employees according to the provisions of Section 3.6 of this Agreement,
- Maintenance of the Enterprise's books and records,
- Preparation of the Enterprises financial statements and reports,
- Payment for the services of the independent auditor engaged pursuant to 25 C.F.R. § 571.12,
- Hiring and supervision of the Gaming Facility security personnel,
- Assuring operating compliance with fire protection services in accordance with Section 2.7,
- Setting the advertising budget and placing advertising,
- Paying bills and expenses,
- Establishing and administering employment practices,

- Obtaining and maintaining insurance coverage, including coverage of public liability, property loss or damage, business interruption, and as set forth on Exhibit E,
- Complying with all applicable provisions of the Internal Revenue Code, and
- Paying from Enterprise Funds and as an Operating Expense, the costs of any increased public safety services, which may be obtained from responsible local government authority or in accordance with any Municipal Services Agreement or other agreement with any Governmental Authority.

Manager is hereby granted the necessary power and authority to act, , in order to fulfill any and all of its responsibilities under the foregoing enumerated provisions this Agreement.

Subject to obtaining any required approval of the Tribal Council and subject to any specific conditions and limitations in this Agreement, Manager shall have the responsibility to, and is hereby further granted the necessary power and authority to act and to do all additional things required to be done by Manager under this Agreement, or which Manager reasonably determines to be necessary or appropriate to carry on the day to day operation of the Enterprise and the Gaming Facility and which are consistent with the then-effective Operating Budget and Annual Plan, and which have been authorized by the Tribal Council, as may be required by this Agreement.

In discharging its responsibility and in exercising its power and authority, Manager shall act in the best interests of the Tribe and the Enterprise and shall perform its obligations under this Agreement and, in connection with the day-to-day operation, management and maintenance of the Enterprise and the Gaming Facility, in accordance with the Enterprise Operating Standards. To the extent of its ability to do so, Manager shall assure that the Enterprise is operated in accordance with the requirements of any applicable Municipal Services Agreement and the Compact. Nothing herein grants or is intended to grant Manager a titled interest in the Property or to the Gaming Facility or to the Enterprise. Manager hereby accepts such retention and engagement. The Tribe shall have the sole proprietary interest in and ultimate responsibility for the conduct of all Gaming conducted by the Enterprise, subject to the rights and responsibilities of Manager under this Agreement.

3.1.2 Required Tribal Council Approval.

Manager shall obtain the prior written approval of the Tribal Council for any of the following:

- (1) Any agreement or understanding with any Governmental Authority (except the Tribe), relating to the transactions contemplated hereunder and under the Loan Agreement.
- (2) Approval of any Operating Budget and Annual Plan or any action not consistent with the then-current Operating Budget and Annual Plan, provided that Manager may incur expenses that are consistent with the amounts allowed in the prior year's Operating Budget during any period in which the Operating Budget and Annual Plan has not been approved.
- (3) Any contract for (i) the acquisition of gaming equipment, (ii) any Capital Replacement, (iii) any material modification to the Gaming Facility, or (iv) any modification of any such contract, which in each case involves an expenditure or obligation of more than [] b4
- (4) Any change to this Agreement, the Loan Agreement, or any other agreement between the Tribe and Manager.
- (5) Any borrowing in an amount in excess of [] or any contract, including any lease or concession agreement, obligating the Tribe or the Enterprise for more than [] or having a term in excess of one (1) year, or, in the case of a restaurant lease, a term in excess of four (4) years.
- (6) The selection, employment or dismissal of the General Manager, Chief Financial Officer, Marketing Director, or Security Director of the Enterprise.
- (7) Any transaction that would result in any lien or charge on any property of the Tribe or any income or revenue of the Enterprise.
- (8) Select or change of the Enterprise Name; the content or appearance of any trademark, service mark, trade name, logo, signage or other similar mark or trade dress identifying the Enterprise or its business; and any marketing plan established under Section 3.7.2, including the content of any advertising.
- (9) Any identification, designation or advertising of Manager or any Affiliate or member of the Manger associating it with the operation of the Enterprise.
- (10) The use of the Gaming Facility for purposes other than Gaming pursuant to the provisions of Section 3.4.3.
- (11) The selection of any certified public accountant or firm to audit the financial statements and records of the Enterprise or the engagement of any attorney, other than attorneys rendering professional services on

matters associated with the day to day operation of the Enterprise in the normal course of business.

- (12) Approval of Enterprise Employee Policies or any modification thereto.
- (13) Except as permitted by Section 3.9.1, approval of any expenditure in any category five (5) percent of more in excess of the amount specified for that category in the then-current Operating Budget.
- (14) Approval of signage under Section 6.2.
- (15) Approval of the size, location and other attributes of the display of any Marks under Section 6.2.
- (16) Any other matter which, under any other provision of this Agreement, requires the approval of the Tribe or the Tribal Council.

3.2 Other Duties of Manager. In managing, operating, maintaining, and repairing the Enterprise and the Gaming Facility, under this Agreement, Manager's duties shall include, without limitation, the following:

3.2.1 Operating Capital. Manager will provide initial Operating Capital under the terms of Section 3.8 of this Agreement, and will provide additional necessary Operating Capital to the Tribe under the terms of Section 8.12 of this Agreement.

3.2.2 Physical Duties. With any necessary approval of the Tribal Council, Manager shall use all appropriate measures for the orderly physical administration, management, and operation of the Enterprise and the Gaming Facility, including without limitation capital improvements cleaning, painting, decorating, plumbing, carpeting, grounds care and such other maintenance and repair work as is reasonably necessary.

3.2.3 Compliance. Manager shall comply with, and cause the Enterprise to comply with, all Applicable Laws and Legal Requirements.

3.2.4 Required Filings. Manager shall comply with all applicable provisions of the Internal Revenue Code including, but not limited to, the prompt filing of any cash transaction reports, and W-2G reports that may be required by the Internal Revenue Service of the United States or under the Compact. Manager shall also comply with all applicable reporting and filing provisions of any Governmental Authorities.

3.2.5 Contracts in Enterprise Entity's Name Doing Business as the Enterprise and at Arm's Length. Contracts for the operations of the Enterprise shall, to the extent practicable, be entered into in the name of the Enterprise Entity, doing business as the Enterprise, and, after obtaining any necessary approval of the Tribal Council, signed by the General Manager on behalf of Manager as the Tribe's or the Enterprise Entity's authorized agent, as may be appropriate. Nothing contained in this Section 3.2.5 shall be deemed to be or constitute a waiver of the Tribe's sovereign

immunity and any contract requiring such a waiver shall be subject to the written approval of the Tribe in its sole discretion. In no event shall Manager enter into any contract or agreement on behalf of the Tribe or affecting the Enterprise with any Affiliate of Manager, other than with the specific and express approval of the Tribe. In the event Manager desires to enter into any contract or agreement on behalf of the Tribe or affecting the Enterprise with an Affiliate of Manager, the request to the Tribe shall state the business reasons for entering into a contract with an Affiliate of Manager.

3.3 Security. Manager shall provide for appropriate security for the operation of the Enterprise. All aspects of the Gaming Facility security shall be the responsibility of Manager. All security officers shall be bonded and insured in an amount commensurate with his or her enforcement duties and obligations. The cost of any charge for security and increased public safety services will be an Operating Expense.

3.4 Damage, Condemnation or Impossibility of the Enterprise. If, during the term of this Agreement, the Gaming Facility is damaged or destroyed by fire, war, or other casualty, or by an Act of God, or is taken by condemnation or sold under the threat of condemnation, or if Gaming on the Property is prohibited under Applicable Law, Manager shall have the following options:

3.4.1 Recommencement of Operations. If Gaming on the Property is prohibited by Applicable Law, and it appears that such prohibition will continue for more than one (1) year, Manager shall have the option to terminate this Agreement (and Manager shall be entitled to only so much of the Management Fee as was due and payable at or before the time of cessation of Gaming) or to continue this Agreement and to commence or recommence the operation of Gaming at the Gaming Facility if, such commencement or recommencement shall be commercially feasible pursuant to Applicable Law and all Legal Requirements in the reasonable judgment of Manager. If Gaming on the Property is prohibited by Applicable Law for a period of two (2) years or more, this Agreement may be terminated by either Party, and Manager shall be entitled to only so much of the Management Fee as was due and payable at or before the time of cessation of Gaming. Notwithstanding any term or provision hereof or of the Loan Agreement or the Development Agreement to the contrary, the applicability of this Section is neither intended to nor shall be interpreted to relieve, excuse or in any way limit the Tribe's or the Enterprise Entity obligation to repay, subject to any contractual limitations on sources of repayment, all amounts due to Manager or Lender, including, without limitation: (i) to the amounts due under the Loan Agreement (including principal and interest); and (ii) to any other loans or advances Manager has made to the Tribe or the Enterprise Entity, including, without limitation: (a) repayment of the Self-Sufficiency Note, (b) repayment of the Exclusivity Waiver Note, (c) repayment of the Interim Promissory Note, (d) repayment of the Tribal Member Note, (e) advances made pursuant to Section 8.12 of this Agreement, (f) repayment of all Deficiency Payments Manager has made to the Tribe or the Enterprise Entity pursuant to Section 5.5 of this Agreement, and (g) reimbursement for any payment Manager or an Affiliate thereof pays to Lender pursuant to the terms of the Loan Agreement.

3.4.2 Repair or Replacement. If the Gaming Facility is damaged, destroyed or condemned so that Gaming can no longer be conducted at the Gaming Facility, the Gaming Facility shall be reconstructed if the insurance or condemnation proceeds are sufficient to restore or replace the Gaming Facility to a condition at least comparable to that before the casualty or condemnation occurred. If the insurance proceeds or condemnation awards are insufficient to reconstruct the Gaming Facility to such condition, Manager may with the consent of the Tribe, arrange for third-party financing to reconstruct the Gaming Facility to such condition. If the insurance proceeds are not sufficient and are not used to repair the Gaming Facility, Manager, with the prior approval of the Tribe, shall adjust and settle any and all claims from such insurance proceeds or condemnation awards, and such proceeds or awards shall be applied in the following order: (i) to the amounts due under the Loan Agreement (including principal and interest); (ii) to any other loans or advances Manager has made to the Tribe or the Enterprise Entity, including, without limitation: (a) repayment of the Self-Sufficiency Note, (b) repayment of the Exclusivity Waiver Note, (c) repayment of the Interim Promissory Note, (d) advances made pursuant to Section 8.12 of this Agreement; (e) repayment of all Deficiency Payments Manager has made to the Tribe or the Enterprise Entity pursuant to Section 5.5 of this Agreement; and (f) reimbursement for any payment Manager or an Affiliate thereof pays to Lender pursuant to the terms of the Loan Agreement; (iii) to any earned undistributed Management Fees due Manager pursuant to Section 5 of this Agreement; and (iv) any surplus shall be distributed to the Tribe.

3.4.3 Other Business Purposes. During any period in which Gaming is prohibited by Applicable Law, if this Agreement is not terminated and if Manager obtains the approval of the Tribal Council, Manager shall have the option to cause the Gaming Facility to be used for other purposes included in the Enterprise and reasonably incidental to Class II and Class III Gaming. For any purpose other than Gaming, Manager shall satisfy all Legal Requirements for such purpose, and pursue such purpose in compliance with all Applicable Law.

3.4.4 Termination of Gaming. If Manager has the right to terminate this Agreement and desires to do so, it shall notify the Tribe in writing that it is terminating this Agreement, in which case Manager shall retain any rights Manager may have to undistributed Management Fees and/or Net Revenues pursuant to Section 5 of this Agreement and rights to repayments of amounts owed to it, including, without limitation, (i) to the amounts due under the Loan Agreement (including principal and interest); and (ii) to any other loans or advances Manager has made to the Tribe or the Enterprise Entity, including, without limitation, (a) repayment of the Self-Sufficiency Note, (b) repayment of the Exclusivity Waiver Note, (c) repayment of the Interim Promissory Note, (d) repayment of the Tribal Member Note, (e) advances made pursuant to Section 8.12 of this Agreement; (f) repayment of all Deficiency Payments Manager has made to the Tribe or the Enterprise Entity pursuant to Section 5.5 of this Agreement; and (g) reimbursement for any payment Manager or an Affiliate thereof pays out of its own funds to Lender pursuant to the terms of the Loan Agreement. If Manager does not elect to terminate this Agreement, it may take whatever action may be necessary to reduce

expenses during such termination of Gaming, and shall not be obligated to supply operating capital, notwithstanding Section 8.12 to the contrary.

3.4.5 Tolling of the Agreement. If, after a period of cessation of Gaming on the Property, the recommencement of Gaming is possible, and if neither Party has terminated this Agreement under the provisions of Section 3.4.1, the period of such cessation shall not be deemed to have been part of the Term of this Agreement and the date of expiration of the Term of this Agreement shall be extended by the number of days of such cessation period. The costs of recommencing Gaming shall be subject to the process described in Section 3.9 of this Agreement and, when approved by the Tribe pursuant to that Section, shall be treated in accordance with GAAP.

3.5 Sale of Alcoholic Beverages and Tobacco Products. No Tribal legislation prohibiting the sale of tobacco products and/or alcoholic beverages is now in force, and no such legislation will be enacted during the term of this Agreement. The Tribe agrees to enact any Tribal legislation necessary to allow sale of alcoholic beverages or tobacco products in the Gaming Facility. The Tribe and Manager mutually agree to (i) include sale of tobacco products and alcoholic beverages within the Gaming Facility to the fullest extent allowed by the Compact and (ii) cooperate in obtaining such permits and licenses as may be required for such sale of tobacco products and alcoholic beverages in the manner required by the Compact or Applicable Law.

3.6 Employees.

3.6.1 Manager's Responsibility. Manager shall have, subject to the rights of the Tribal Council and the other terms of this Agreement, the exclusive responsibility and authority to direct the selection, training, control, compensation, and discharge of all Enterprise Employees, and the sole responsibility for determining whether a prospective employee is qualified for employment and the appropriate level of compensation to be paid. All employees shall be employed by the Enterprise Entity, subject to Manager's right to directly employ the General Manager and/or the Chief Financial Officer as an Operating Expense of the Enterprise.

3.6.2 Enterprise Employee Policies. Manager shall prepare for review and approval by the Tribal Council, a draft of personnel policies and procedures (the "Enterprise Employee Policies"), including a job classification system with salary levels and scales, which policies and procedures shall include provisions designed to establish fair and uniform standards for all Enterprise Employees, including Key Enterprise Employees, Tribe Designated Employees, and Off-Site Employees, which will include grievance procedures for the fair and uniform resolution of employment issues and disputes between Manager and Enterprise Employees. The grievance procedure shall be governed by a Grievance Committee comprised of the General Manager, an employee representative and a tribal representative. Any revisions to the Enterprise Employee Policies shall not be effective unless they are approved in the same manner as the original Enterprise Employee Policies. Manager shall have the responsibility and authority, under and subject to the requirements of, the Enterprise Employee Policies, to render a final

decision on all Enterprise Employee issues and grievances. The Enterprise Policies shall not apply to, and shall not give the General Manager any authority over, licensing matters or any other matter which is within the jurisdiction or authority of the Tribal Gaming Commission.

3.6.3 Key Enterprise Employees. The selection of the General Manager, Chief Financial Officer, Marketing Director and Security Director of the Enterprise shall be subject to the approval of the Tribal Council. Manager shall provide the Tribal Council sufficient information to adequately evaluate all recommendations for employment in the positions of General Manager, Chief Financial Officer, Marketing Director or Security Director. The General Manager, Chief Financial Officer, Marketing Director and Security Director of the Enterprise shall be Enterprise Employees, unless Manager exercises its right to cause the General Manager and/or the Chief Financial Officer to be employed directly by Manager, its Affiliate or a member. The terms of employment of Enterprise Employees shall be structured as though all labor, employment, and unemployment insurance laws applicable in the State, would apply to employees of a business in the State if they were not working on an Indian reservation, would also apply to Enterprise Employees. The Tribe and the Enterprise Entity agree to take no action to impede, supersede or impair such treatment.

3.6.4 Off-Site Employees. Manager shall have the right to use off-site employees to perform some of the services required of it under this Agreement. Manager shall pay and bear all costs of its employees located off-site, and such costs shall not be included in Operating Expenses.

3.6.5 No Manager Wages or Salaries. Neither Manager nor Manager's Affiliates nor any of their officers, directors, shareholders, or employees who are not Enterprise Employees shall be compensated by wages from, or contract payments by the Enterprise or the Enterprise Entity for any work which they perform under this Agreement, other than the Management Fee due and payable pursuant to Section 5.1 hereof, and the repayment of loans Manager has made to or on behalf of the Tribe or the Enterprise Entity, including, without limitation: (i) to the amounts due under the Loan Agreement (including principal and interest); and (ii) to any other loans or advances Manager has made to the Tribe or the Enterprise Entity, including, without limitation: (a) repayment of the Self-Sufficiency Note, (b) repayment of the Exclusivity Waiver Note, (c) repayment of the Interim Promissory Note, (d) repayment of the Tribal Member Note, (e) advances made pursuant to Section 8.12 of this Agreement, (f) repayment of all Deficiency Payments Manager has made to the Tribe or the Enterprise Entity pursuant to Section 5.5 of this Agreement, and (g) reimbursement for any payment Manager or an Affiliate thereof pays to Lender pursuant to the terms of the Loan Agreement. Nothing in this subsection shall restrict the ability of an Enterprise Employee to purchase or hold stock in Manager, or Manager's Affiliates where (i) such stock is publicly held, and (ii) such employee acquires, on a cumulative basis, less than five percent of the outstanding stock in the corporation.

3.6.6 Tribal Administrative Fee. The funding of the operation of the Tribal Gaming Commission shall, prior to the Commencement Date, be funded as an advance to the Tribe or the Enterprise Entity, said advance to be repaid pursuant to an Interim Promissory Note as a component of the Interim Loan or pursuant to the terms of the Loan Agreement. The expenses and costs related to the operation of the Gaming Commission shall be Operating Expenses, provided that the Tribe and Manager agree that the maximum payable by the Enterprise for Gaming Commission regulatory costs shall be agreed to by the Parties in an annual amount included as part of the Operating Budget and Annual Plan, which in any event shall be limited to reasonable, customary and ordinary costs and shall not include any fees or expenses which are commercially unreasonable or excessive.

3.6.7 Employee Background Checks. A background investigation shall be conducted by the TGC in compliance with all Legal Requirements and Applicable Law, to the extent applicable, on each applicant for employment as an Enterprise Employee or Manager Employee as soon as reasonably practicable. To the full extent required by Legal Requirements or Applicable Law, all such applicants will submit, in the required form, a background document to the National Indian Gaming Commission for its review.

No individual whose prior activities, criminal record, if any, or reputation, habits and associations are known to pose a threat to the public interest, the effective regulation of Gaming, or to the gaming licenses of Manager or any of its Affiliates or members, or to create or enhance the dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of Gaming, shall knowingly be employed by Manager, the Enterprise or the Enterprise Entity for any purpose related to the Enterprise.

The background investigation procedures employed by the TGC shall be formulated in consultation with Manager and shall satisfy all Applicable Laws and Legal Requirements independently applicable to Manager. Any cost associated with obtaining such background investigations of the Tribe or its personnel or Enterprise Employees or Manager Employees or Off-Site Employees shall constitute an Operating Expense. Any cost associated with background investigations of Manager, its Affiliates or members or any of their employees who are not Enterprise Employees or Manager Employees shall be paid by Manager and shall not be considered Operating Expenses.

3.6.8 Key Employee Background Checks. Key Employees will submit to the same background investigation as conducted by the TGC for all Enterprise Employees under the same policies and procedures, terms and conditions as detailed in Section 3.6.7 above. In addition to submitting to a TGC employee background check, Key Employees will submit, in the required form, a background document to the National Indian Gaming Commission for its review.

3.6.9 Off-Site Employee Background Checks. If Manager exercises its right to use Off-Site Employees to perform some of the services required of it under this Agreement that would fall under the normal duties of the Key Employees, including the General Manager, Chief Financial Officer, Marketing Director and or Security Director

of the Enterprise, then all Off-Site Employees designated to provide those services and other Off-Site Employees for whom licensing is otherwise required, must submit to the same background investigation as conducted by the TGC for all Enterprise Employees under the same policies and procedures, terms and conditions as detailed in Section 3.6.7 above. In addition to submitting to a TGC background check, all such employees will also submit, in the required form, a background document to the National Indian Gaming Commission for its review, prior to serving in those capacities.

3.6.10 Indian Preference and Local First Source Preference. In order to maximize benefits of the Enterprise to the Tribe and the community, Manager shall, during the term of this Agreement, to the extent permitted by Applicable Law, including but not limited to the Indian Civil Rights Act, 25 U.S.C. § 1301 et seq., any applicable Municipal Services Agreement and the Compact, give preference in recruiting, training and employment to qualified Native Americans, their spouses and children in all job categories of the Enterprise. Manager shall:

- (i) conduct job fairs and skills assessment meetings for Native Americans, their spouses and children;
- (ii) abide by any duly enacted Tribal preference laws;
- (iii) in consultation with the Tribe, develop a management training program for Native Americans, their spouses and children. This program shall be structured to provide appropriate training for those participating to assume full managerial control at the conclusion of the Term of this Agreement. The costs and expenses of this programs shall be deemed Operating Expenses;
- (iv) train and hire, to the maximum practicable extent permitted by law, members of the local communities where the Gaming Facility is located. Whenever possible, Enterprise jobs shall be filled by Native Americans, their spouses and children, and other persons living within Contra Costa County, California, and particularly the North Richmond and Parchester Village communities. (“Local Community Members”). Subject to any necessary approval of the Tribal Council , final determination of the qualifications of all persons for employment shall be made by Manager, subject to any licensing requirement of the TGC; and
- (v) Beginning on the Commencement Date, Manager shall work with the Tribe to develop and present to the Tribe for its approval, a training plan so that, by the end of the Term of the Agreement, all persons assigned to work at the Gaming Facility will be Enterprise Employees.

3.6.11 Removal of Employees. Manager will act in accordance with the Enterprise Employee Policies with respect to the discharge, demotion or discipline of any Enterprise Employee. including Tribe Designated Employees, Key Enterprise Employees, and Key Employees.

3.6.12 Intentionally Omitted.

3.6.13 Tribe Designated Employee. The Tribe shall have the right to designate (and to remove and replace) up to five (5) individuals who pass any necessary background checks and who are not prohibited from holding such positions by Section 9.2 or 9.3, below, as Tribe Designated Employees (one or more of whom may be trainees) and who are reasonably qualified for such positions by experience or training. Tribal Enterprise Employees shall be paid reasonable and competitive salaries, which shall be Operating Expenses. One of such persons shall be designated by the Tribe as the Tribal Executive Manager. The General Manager, Chief Financial Officer, Marketing Director and Security Director shall work in close consultation and association with the Tribal Executive Manager and other Tribe Designated Employees designated by the Tribal Executive Manager, and shall meet and give informational reports to them weekly, to the end that the instruction and training of members of the Tribe contemplated by this Agreement can be maximized. The Tribal Executive Manager shall have only such authority as may be specified in other provisions of this Agreement. No Tribe Designated Employee shall interfere with the General Manager, Chief Financial Officer, Marketing Director or Security Director in the performance of their duties. During the period prior to the Commencement Date the General Manager shall also meet with the Tribal Gaming Commission for co-ordination and reporting purposes.

3.7 Marketing

3.7.1 Nature of Marketing Services. The services described in this Section 3.7 ("Marketing Services") shall be provided by Manager.

3.7.2 Marketing Services. Manager shall provide the following Marketing Services which shall be an Operating Expense:

(i) provide a Marketing Director, selected pursuant to Section 3.6.3 hereof, and adequate staff to implement a marketing plan. The Marketing Director and his or her staff shall be employees of the Enterprise Entity; provided that the Tribe may authorize Manager, upon Manager's request, to use Marketing Services provided by Off-Site Employees, pursuant to Section 3.6.4 of this Agreement;

(ii) no later than 90 days prior to the scheduled Commencement Date, Manager shall have prepared and implemented a marketing plan for the Gaming Facility:

(iii) the marketing plan shall include provisions for the Gaming Facility opening, public relations, community relations, electronic and print media advertising, industry advertising and relations, employee marketing programs, promotional programs, entertainment and hospitality marketing and advertising, group sales, special events, tour sales, and any and all other related or required

components of a complete marketing program sufficient to maximize the Gaming Facility's position in the local market; and

(iv) Manager shall have the responsibility for full implementation and execution of all strategies and tactics for placing the advertising contemplated by the marketing plan.

3.8 Pre-Opening. At least nine (9) months prior to the scheduled Commencement Date, Manager shall commence implementation of a pre-opening program which shall include all activities necessary to financially and operationally prepare the Gaming Facility for opening. To implement the pre-opening program, Manager shall prepare a comprehensive Start-Up Budget which shall be submitted to the Tribe for its approval no later than nine (9) months prior to the scheduled Commencement Date ("Start-Up Budget"). The Start-Up Budget shall set forth expenses which Manager anticipates to be necessary or desirable in order to prepare the Gaming Facility for the Commencement Date, including without limitation, cash for disbursements, and Start-Up Expenses, as defined in the Development Agreement. The Start-Up Budget shall be funded pursuant to the Development Agreement or Loan Agreement. The Tribe recognizes that the Start-Up Budget will have been prepared well in advance of the Commencement Date and will be intended only to be a reasonable estimate, subject to variation due to a number of factors, some of which will be outside of Manager's control (e.g. the time of completion, inflationary factors and varying conditions for the goods and services required). The Tribe agrees that the Start-Up Budget may be modified from time to time, subject to approval of the Tribal Council in accordance with the procedure established by Section 3.9 of this Agreement for adjustments to the Operating Budget and Annual Plan.

The Tribe's approval of the Start-Up Budget shall not be unreasonably withheld, conditioned or delayed. Manager shall meet with the Tribal Council to discuss the proposed Start-Up Budget, and the Tribe's approval shall be deemed given unless a specific written objection thereto is delivered by the Tribe to Manager within sixty (60) days after Manager and the Tribal Council have met to discuss the proposed Start-Up Budget. If the Tribal Council for any reason fails to meet with Manager to discuss a proposed Start-Up Budget within sixty (60) days of Manager's delivery of the proposed Start-Up Budget, the Tribe shall be deemed to have consented to Manager's proposed Start-Up Budget, unless a specific written objection is delivered to Manager within sixty (60) days after the date the proposed Start-Up Budget is submitted to the Tribe. The Tribe shall review the Start-Up Budget on a line-by-line basis. To be effective, any notice which disapproves a proposed Start-Up Budget must contain specific objections in reasonable detail to individual line items. Any dispute between the Parties pursuant to this Section 3.8 shall be resolved pursuant to Section 16.2 hereof.

3.9 Operating Budget and Annual Plan. Manager shall, prior to the scheduled Commencement Date, submit to the Tribe, for its approval, a proposed Operating Budget and Annual Plan for the remainder of the current Fiscal Year. Thereafter, Manager shall, not less than ninety (90) days prior to the commencement of each full or partial Fiscal Year, submit to the Tribe, for its approval, a proposed Operating Budget and Annual Plan for the ensuing full or partial Fiscal Year, as the case may be. The Operating Budget and Annual Plan shall include a projected income statement, balance sheet, and projections of cash flow for the Enterprise, with

detailed justifications explaining the assumptions used therein. Included with the Operating Budget and Annual Plan shall be a schedule of repairs and maintenance (other than Capital Replacements), a business and marketing plan for the Fiscal Year, the Minimum Balance which must remain in the Enterprise Bank Accounts and the House Bank as of the end of each month during the Fiscal Year to assure sufficient monies for working capital purposes, and the House Bank and other expenditures authorized under the Operating Budget and Annual Plan. Manager shall keep the Tribal Executive Manager advised in all aspects of the preparation of any Operating Budget and Annual Plan.

The Operating Budget and Annual Plan for the Enterprise will be comprised of the following:

- (i) a statement in reasonable detail of the estimated income and expenses for the coming Fiscal Year, including estimates as to Gross Revenues and Operating Expenses for such Fiscal Year, such operating budget to reflect the estimated results of the operation during each month of the subject Fiscal Year.
- (ii) either as part of the statement of the estimated income and expenses referred to in the preceding clause (i), or separately, budgets (and timetables and requirements of Manager) for:
 - (a) repairs and maintenance;
 - (b) Capital Replacements;
 - (c) Furnishings and Equipment; advertising and business promotion programs for the Enterprise; and
 - (d) the estimated cost of Promotional Allowances; and
- (iii) a business and marketing plan for the subject Fiscal Year in reasonable detail.

The Tribe's approval of the Operating Budget and Annual Plan shall not be unreasonably withheld, conditioned or delayed. Manager shall meet with the Tribal Council to discuss the proposed Operating Budget and Annual Plan, and the Tribe's approval shall be deemed given unless a specific written objection thereto is delivered by the Tribe to Manager within sixty (60) days after Manager and the Tribal Council have met to discuss the proposed Operating Budget and Annual Plan. If the Tribal Council for any reason fails to meet with Manager to discuss a proposed Operating Budget and Annual Plan within thirty sixty (60) of Manager's delivery of the proposed Operating Plan and Annual Budget, the Tribe shall be deemed to have consented to Manager's proposed Operating Budget and Annual Plan unless a specific written objection is delivered to Manager within thirty sixty (60) after the date the proposed Operating Budget and Annual Plan is submitted to the Tribe. The Tribe shall review the Operating Budget and Annual Plan on a line-by-line basis. To be effective, any notice which disapproves a proposed Operating Budget and Annual Plan must contain specific objections in reasonable detail to individual line

items. Any disputes between the Parties regarding the initial Operating Budget and Annual Plan shall be resolved pursuant to Section 16.2 hereof.

If any proposed Operating Budget and Annual Plan contain any disputed budget item(s), the Tribal Council and Manager agree to cooperate with each other in good faith to resolve the disputed or objectionable proposed item(s). If the Tribe and Manager are unable to resolve the disputed or objectionable item(s) prior to the commencement of the applicable Fiscal Year, the undisputed portions of the proposed Operating Budget and Annual Plan shall be deemed to be adopted and approved and the corresponding line item(s) contained in the Operating Budget and Annual Plan for the preceding Fiscal Year shall be adjusted as set forth herein and shall be substituted in lieu of the disputed item(s) in the proposed Operating Budget and Annual Plan. Those line items that are in dispute shall be adjusted to equal the product of the preceding Fiscal Year's actual expense (pro-rated over a full year, in the event the Gaming Facility was not in operation during the entire preceding Fiscal Year) for the corresponding line items multiplied by (i) five percent (5%), or (ii) a percentage determined by Manager not greater than ten percent (10%) with respect to line items that are related to maintaining Enterprise Operating Standards.

Notwithstanding the foregoing, the Tribe in its sole discretion, shall have the authority to increase the amount of any line item in, or add one or more line items to, any Annual Budget proposed by Manager, provided that the aggregate amount of budgeted expenditures is not increased by more than [] The Tribe shall have the right in its discretion to direct the expenditure of such incremental amounts.

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3.9.1 Adjustments to Operating Budget and Annual Plan. Manager may, after notice to and approval by the Tribe, which approval shall not be unreasonably withheld, conditioned or delayed, revise the Operating Budget and Annual Plan from time to time, as necessary, to reflect any unpredicted significant changes, variables or events or to include additional, unanticipated items of expense. Manager may, after notice to the Tribe, reallocate part or all of the amount budgeted with respect to any line item to another line item and to make such other modifications to the Operating Budget and Annual Plan as Manager deems necessary, provided that the total adjustments to the Operating Budget and Annual Plan shall not exceed 105% of the aggregate approved Operating Budget and Annual Plan without approval of the Tribe. Manager shall submit a revision of the Operating Budget and Annual Plan to the Tribe for review on a semi-annual basis. In addition, in the event actual Gross Revenues for any period are greater than those provided for in the Operating Budget and Annual Plan, the amounts approved in the Operating Budget and Annual Plan for guest services, food and beverage, telephone, utilities, marketing and the repair and maintenance of the Gaming Facility for any month shall be automatically deemed to be increased to an amount that bears the same relationship (ratio) to the amounts budgeted for such items as actual Gross Revenue for such month bears to the projected Gross Revenue for such month. The Tribe acknowledges that the Operating Budget and Annual Plan is intended only to be a reasonable estimate of the Enterprise's revenues and expenses for the ensuing Fiscal Year. Manager shall not be deemed to have made any guarantee concerning projected results contained in the Operating Budget and Annual Plan. Any disputes between the Parties regarding adjustments to an Operating Budget and Annual Plan shall be resolved pursuant to Section 16.2 hereof.

3.10 Capital Budgets. Manager shall, not less than ninety (90) days prior to the commencement of each Fiscal Year, or partial Fiscal Year, submit to the Tribe a recommended capital budget (the “Capital Budget”) describing the present value, estimated useful life and estimated replacement costs for the ensuing full or partial year, as the case may be, for the physical plant, furnishings, equipment, and ordinary capital replacement items, all of which are defined to be any items, the cost of which is capitalized and depreciated, rather than expensed, using GAAP (“Capital Replacement”) as shall be required to operate the Enterprise in accordance with sound business practices and the Enterprise Operating Standards. Capital Replacement in the Capital Budget in an aggregate sum materially in excess of the sum of the Capital Reserve for the Fiscal Year shall be subject to approval by the Tribe in its sole discretion. The Tribal Council or its designee(s) and Manager shall meet to discuss the proposed Capital Budget and the Tribe shall be required to make specific written objections to a proposed Capital Budget in the same manner and within the same time periods specified in Section 3.9 with respect to an Operating Budget and Annual Plan. The Tribe shall not unreasonably withhold, condition or delay its consent. Unless the Tribe and Manager otherwise agree, Manager shall be responsible, without any payment of any additional fee, for the design and installation of Capital Replacements, subject to the Tribe’s approval. Any disputes arising under this Section 3.10 shall be resolved pursuant to Section 16.2 hereof.

3.11 Capital Replacements. The Tribe or the Enterprise Entity shall effect and expend out of Gross Revenues such amounts for any Capital Replacements as shall be required, in the course of the operation of the Enterprise, to maintain, at a minimum, the Enterprise in compliance with all Applicable Law and any Legal Requirements and to comply with Manager’s recommended programs for renovation, modernization and improvement intended to keep the Enterprise competitive in its market, to maintain industry standards, to maintain conformity with the Enterprise Operating Standards; or to correct any Emergency Condition, including without limitation, maintenance, replacements or repairs which are required to be effected by the Tribe or the Enterprise Entity, which in Manager’s sole discretion requires immediate action to preserve and protect the Gaming Facility, assure its continued operation, and/or protect the comfort, health, safety and/or welfare of the Gaming Facility’s guests or employees (an “Emergency Conditions”); provided, however, that the Tribe and the Enterprise Entity shall be under no obligation to fund Capital Replacements in an aggregate amount greater than its periodic required contributions to the Capital Replacement Reserve described in Section 3.12, but may do so in its sole discretion. Manager is authorized to take all steps and to make all expenditures from the Disbursement Account, described at Section 3.18.3 (in the case of non-capitalized repairs and maintenance), or Capital Replacement Reserve, described at Section 3.12, (in the case of expenditures for Capital Replacements) as it reasonably deems necessary to repair and correct any Emergency Condition, regardless whether such provisions have been made in the Capital Budget or the Operating Budget and Annual Plan for any such expenditures. Design and installation of Capital Replacement shall be effected in a time period and subject to such conditions as the Tribe or the Enterprise Entity may establish to minimize interference with or disruption of ongoing operations. Any disputes arising under this Section 3.11 shall be resolved pursuant to Section 16.2 hereof.

3.12 Capital Replacement Reserve. Manager shall establish a Capital Replacement Reserve on the books of account of the Enterprise, and the periodic contributions of cash

required by Section 3.13 shall be deposited by Manager into an account (the "Capital Replacement Reserve") established in the Tribe's or the Enterprise Entity's name at a bank designated by the Tribe in accordance with Section 3.18.1 of this Agreement. All amounts in the Capital Replacement Reserve shall be invested in interest bearing obligations of the United States Government and approved by the Tribe and Manager to the extent that availability of funds, when required, is not thereby impaired. Interest earned on amounts deposited in the Capital Replacement Reserve shall be credited to the Capital Replacement Reserve and shall be available for payment of expenditures for Capital Replacements to purchase those items included in the Capital Budget approved by the Tribe or such emergency additions, repairs or replacement as shall be required to correct an Emergency Condition or to comply with operating standards.

3.13 Periodic Contributions to Capital Replacement Reserve. In accordance with Section 5.4 of this Agreement, Manager shall make monthly deposits out of the Depository Account into the Capital Replacement Reserve in amounts equivalent to an annual rate of [] percent [] of Gross Revenues during the first [] years of the Term of this Agreement after the Commencement Date, [] percent [] during the next [] years, and [] percent [] during the remainder of the Term; provided that no contribution shall be made to the Capital Replacement Reserve which would cause the balance thereof to be equal to or greater than [] percent [] of Gross Revenues for the most recent full Fiscal Year. The cash amounts required to be so deposited shall be calculated and deposited into the Capital Replacement Reserve, in arrears, no later than the 21st day of the month immediately following the month with respect to which a deposit is made. If any adjustment of Gross Revenues is made as a result of an audit or for other accounting reasons, a corresponding adjustment in the Capital Replacement Reserve deposit shall be made. In addition, all proceeds from the sale of capital items no longer needed for the operation of the Enterprise, and the proceeds of any insurance received in reimbursement for any items previously paid for from the Capital Replacement Reserve, shall be deposited into the Capital Replacement Reserve upon receipt, provided that no deposit shall be made to the Capital Replacement Reserve which would cause the balance thereof to be equal to or greater than [eight] percent [8%] of Gross Revenues for the most recent full Fiscal Year, except as may be required under the Loan Agreement. Any such deposit into the Capital Replacement Reserve shall reduce the obligation to contribute to the Capital Replacement Account hereunder by the amount of such contribution.

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Notwithstanding any term or provision of this Agreement to the contrary, including, without limitation, Section 5.4(viii) hereof, any and all contributions to the Capital Replacement Reserve shall not be deemed or accounted for as Operating Expenses.

3.14 Use and Allocation of Capital Replacement Reserve. Any expenditure for Capital Replacements which have been budgeted and previously approved may be paid from the Capital Replacement Reserve for the budgeted purpose without further approval from the Tribe. Any amounts remaining in the Capital Replacement Reserve at the close of any Fiscal Year shall be carried forward and retained in the Capital Replacement Reserve until fully used.

3.15 Contracting. In entering into contracts for the supply of goods and services for the Enterprise, Manager shall give preference to qualified Native Americans, and qualified business entities certified by the Tribe to be controlled by members of the Tribe. "Qualified"

shall mean a member of the Tribe or a business entity certified by the Tribe to be controlled by members of the Tribe, who or which is able to provide services at competitive prices, has demonstrated skills and abilities to perform the tasks to be undertaken in an acceptable manner, in Manager's reasonable opinion, and can meet the reasonable bonding and/or financial requirements of Manager.

3.16 Internal Control Systems. Manager shall install systems for monitoring of all funds (the "Internal Control Systems"), which systems shall comply with all Legal Requirements and Applicable Laws, and shall be submitted to the Tribe and the Tribal Gaming Commission for approval in advance of implementation, which approval shall be given or withheld in the Tribe's reasonable discretion. The Tribe shall have the right to retain an auditor to review the adequacy of the Internal Control Systems prior to the Commencement Date and at reasonable times thereafter. If the Tribe elects to exercise this right, the cost of such review shall be a Start-Up Expense or an Operating Expense, as the case may be. Any significant changes in such systems after the Commencement Date also shall be subject to review and approval by the Tribal Gaming Commission. The Tribal Gaming Commission and Manager shall have the right and duty to maintain and police the Internal Control Systems in order to prevent any loss of proceeds from the Enterprise. The Tribal Gaming Commission shall have the right to inspect and oversee the Internal Control Systems at all times. Manager shall install a closed circuit television system to be used for monitoring all cash handling activities of the Enterprise sufficient to meet all Legal Requirements and Applicable Laws and the reasonable requirements of the Tribal Gaming Commission.

3.17 Tribal Access. Manager shall provide immediate access to the Gaming operation and non-Gaming operations, including the books and records of the Enterprise, to the TGC, the Tribal Executive Manager and the Tribal officials designated by the Tribal Council in accordance with the Gaming Ordinance, who shall have the right to verify the daily Gross Revenues and Net Revenues from the Gaming operation; and access to any other information the Tribe deems appropriate. The Tribal Executive Manager and designated Tribal Officials will be granted immediate access accompanied by Manager. Copies of books and records may be made, but no original books or records shall be removed from the Gaming Facility.

3.18 Banking and Bank Accounts.

3.18.1 Enterprise Bank Accounts. The Tribe shall select a bank or banks for the deposit and maintenance of funds and shall establish in such bank or bank accounts in the name of the Tribe or Enterprise Entity as Manager deems appropriate and necessary in the course of business and as consistent with this Agreement ("Enterprise Bank Accounts"). Establishment of any Enterprise Bank Account shall be subject to the approval of the Tribe, and shall be consistent with the terms of the Loan Agreement. The sum of money agreed to by the Tribe to be maintained in the Enterprise Bank Account(s) to serve as working capital for Enterprise operations, shall include all sums needed for the House Bank, and all sums needed to accrue for payment of expenses not paid on a monthly basis (the "Minimum Balance"). Manager will maintain funds in the Enterprise Bank Accounts equal to the Minimum Balance, and Manager may increase the Minimum Balance, in Manager's reasonable discretion, at any time during the first year following

the Commencement Date to reflect unanticipated working capital needs revealed by actual Enterprise operations. Irrevocable banking instructions, acceptable to the Tribe, Manager and the Lender shall be executed by the Tribe or the Enterprise Entity, as appropriate, with regard to each Enterprise Bank Account and to be in effect during the Term of this Agreement.

3.18.2 Daily Deposits to Depository Account. Manager shall establish in the name of the Tribe or the Enterprise Entity a Depository Account. Manager shall collect all Gross Revenues and other proceeds connected with or arising from the operation of the Enterprise, the sale of all products, food and beverage, alcohol and tobacco, and all other activities of the Enterprise and deposit the related cash daily into the Depository Account at least once during each twenty-four (24) hour period. All money received by the Enterprise on each day that it is open must be counted at the close of operations for that day or at least once during each twenty-four (24) hour period in the presence of a designee of Tribal Executive Manager. Manager agrees to obtain a bonded transportation service to effect the safe transportation of the daily receipts to the bank, which expense shall constitute an Operating Expense. All actions of Manager under this Section shall be consistent with the terms of the Loan Agreement.

3.18.3 Disbursement Account. Manager shall establish in the name of the Tribe or the Enterprise Entity, doing business as the Enterprise, a Disbursement Account. Manager shall, consistent with and pursuant to the approved annual Operating Budget and Annual Plan and subject to any requirements or limitations expressly set forth in this Agreement, have responsibility and authority for making all payments from the Disbursement Account for Operating Expenses, debt payments, Management Fees, disbursements to the Tribe and all other payments the Tribe or the Enterprise Entity is required to make pursuant to Section 5.4 hereof and in the priority required thereby. The Tribal Executive Manager shall have the right to review the computation of any Management Fee for conformity to this Agreement before it is made.

3.18.4 Transfers Between Accounts. Manager shall have the authority to transfer funds, in accordance with the Operating Budget and Annual Plan, from and between the Enterprise Bank Accounts to the Disbursement Account in order to pay for Operating Expenses, payments due under the Loan Agreement, Management Fees, disbursements to the Tribe and all other payments the Tribe or the Enterprise Entity is required to make pursuant to Section 5.4 hereof. Any other actions of Manager under this Section shall be consistent with the terms of the Loan Agreement and subject to any prior approval of the Tribe that may be required by this Agreement.

3.19 Insurance. Manager shall be responsible for obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage. Such coverage shall be consistent with any Lender's requirements set forth in the Loan Agreement and any reasonable direction given by the Tribe. The cost of such insurance shall be an Operating Expense. Such insurance shall be obtained from responsible insurance carriers licensed to do business in the State and shall name the Tribe, the Enterprise Entity, any Tribe Designated Employees, Manager, Manager's Affiliates, Lender, any other required party under the Loan

Agreement as insured Parties, in such amounts as the Tribe or the Lender may reasonably direct, but at all times not less than the minimum amounts on attached Exhibit E.

3.20 Accounting and Books of Account.

3.20.1 Establishment of Accounting Procedures. Manager shall provide for the establishment and maintenance of satisfactory accounting systems that shall at a minimum include an adequate system of internal accounting controls; permit the preparation of financial statements in accordance with GAAP; be susceptible to audit; comply with any recommendations of the CPA firm that audits the book of the Enterprise, allow the Enterprise, the Tribe, and the NIGC to calculate the annual fee under 25 C.F.R. §514.1; permit the calculation and payment of the Management Fee; and provide for the allocation of Operating Expenses or overhead expenses among the Tribe, the Enterprise Entity, Manager, and any other user of shared facilities and services within the Enterprise in accordance with this Agreement.

3.20.2 Statements. Manager shall prepare and provide operating statements and written narrative reports of operations in reasonable detail to the Tribe on a monthly, quarterly, and annual basis. The operating statements and reports shall comply with all Legal Requirements and Applicable Law, be capable of being verified, and shall include an income statement, statement of cash flows, and balance sheet for the Enterprise and a description of each material event or condition bearing on achievement of the goals stated in the Operating Budget and Annual Plan. Such statements shall include the Operating Budget and Annual Plan and Capital Budget projections as comparative statements, and which, after the first full Fiscal Year, will include comparative statements for the comparable period for the prior Fiscal Year of all revenues, and all other amounts collected and received, and all deductions and disbursement made therefrom in connection with the Enterprise.

3.20.3 Books of Account. Manager shall maintain full and accurate books of account at an office in the Gaming Facility or at such other location as may be determined by Manager and approved by the Tribe. The Tribal Executive Manager and any Tribal officials designated by the Tribal Council in accordance with the Gaming Ordinance shall have immediate access to the books of account and daily operations of the Enterprise twenty-four (24) hours a day, seven (7) days a week, and shall have the unlimited right to inspect, examine, and copy all such books and supporting business records, provided that no original books or records shall be removed from the Gaming Facility. Any such copies are to be considered confidential and proprietary and shall not be divulged to any third parties without the express written permission of the Tribe and Manager, respectively. Such rights may be exercised through the Tribal Gaming Commission or through an agent, employee, attorney, or independent accountant acting on behalf of the Tribe, designated pursuant to the provisions of Section 3.17 of this Agreement, under the provisions of the Gaming Ordinance.

3.20.4 Accounting Standards. Manager shall maintain the books and records reflecting the operations of the Enterprise in accordance with the accounting

practices of the Tribe in conformity GAAP consistently applied, and shall adopt and utilize quarterly and annual accounting periods based on a calendar year. The accounting systems and procedures shall comply with Legal Requirements and Applicable Law, and, at a minimum:

- (i) include an adequate system of internal accounting controls;
- (ii) permit the preparation of financial statements in accordance with GAAP;
- (iii) be susceptible to audit;
- (iv) permit the calculation and payment of the Management Fee described in Section 5.1; and
- (v) provide for the allocation of Operating Expenses or overhead expenses among the Tribe, the Enterprise Entity, and any other user of shared facilities and services.

3.20.5 Annual Audit. An independent certified public accounting firm selected by the Tribe shall perform an annual audit of the books and records of the Enterprise and of all contracts for supplies, services or concessions reflecting Operating Expenses. The NIGC shall also have the right to perform special audits of the Enterprise on any aspect of the Enterprise at any time without restriction. The costs incurred for such audits shall constitute an Operating Expense. Such audits shall be provided by the Tribe to any Governmental Authority, as required by Applicable Law, and may be used by Manager for reporting purposes under federal and state securities laws, if required.

3.21 Retail Shops and Concessions. With respect to the operation of the shops and concessions located within the Gaming Facility, Manager shall consult with the Tribe prior to entering into any agreements with respect to shops or concessions located within the Gaming Facility, and Manager, subject to obtaining any required approval of the Tribal Council, shall have final authority with respect to all matters related to such retail shops and concessions, and the Tribe shall not authorize or permit the establishment or operations of any retail shops or concession facilities within the Gaming Facility without the express written consent of Manager, which consent shall not be unreasonably withheld, conditioned or delayed. Manager, with the prior approval of the Tribal Council, shall establish leasing policies which shall generally provide that leases shall have the shortest terms reasonably practicable.

3.22 Entertainment Approvals. In the event that Manager shall determine to provide entertainment and/or sporting events to the public at the Gaming Facility, Manager shall consult with the Tribe prior to entering into any agreements with respect such entertainment or sporting event, and, subject to obtaining any required approval of the Tribal Council, Manager shall have final authority with respect to all matters related to such entertainment and sporting event, and the Tribe shall not authorize or permit the establishment or operations of any entertainment or

sporting events within the Gaming Facility without the express written consent of Manager, which consent shall not be unreasonably withheld, conditioned or delayed.

3.23 Special Rights and Obligations Pertaining to Capital Expansion. In the event that the Tribe or the Enterprise Entity desires to implement capital expansion or improvements with respect to any one or more portions of the Property that would have the effect of materially limiting accessibility, visibility, or would otherwise materially interfere with access to or operation of the Gaming Facility (the "Excess Capital Improvement") and Manager does not consent to the Excess Capital Improvement proposed by the Tribe or the Enterprise Entity, then the Parties shall mediate their differences as provided at Section 16.2. In the event that mediation is not successful, and in the further event that the Tribe or the Enterprise Entity desires to proceed with the Excess Capital Improvement and less than twenty four (24) months have passed since the Commencement Date, then neither the Tribe nor the Enterprise Entity shall take any action with respect to such Excess Capital Improvement until twenty four (24) months shall have elapsed from the Commencement Date. In the event that the Tribe or the Enterprise Entity elects to proceed with Excess Capital Improvements after a date that is twenty four (24) months after the Commencement Date and Manager does not consent to such Excess Capital Improvement, then, as a condition to the right of the Tribe or the Enterprise Entity to proceed with such Excess Capital Improvements, the Tribe shall buy out the remaining term of Manager hereunder within ninety (90) days prior to the proposed start of the Excess Capital Expansion by paying Manager an amount equal to percent of the figure calculated by multiplying: (i) the average Management Fee due and payable to Manager pursuant to and in accordance with the terms and provisions of this Agreement for the twelve (12) months immediately preceding the payment date provided for herein, and (ii) the number of month remaining during the Term (including the month in which the payment date provided for herein occurs). Such obligation shall be paid in cash within ninety (90) days of the determination of the amount to be paid, but in no event later that the start of the proposed Excess Capital Expansion.

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Simultaneously with Manager's receipt of such payment, the Parties shall execute and deliver to each other mutual releases excusing each Party from the further performance of the obligations such Party has assumed and agreed to perform hereunder. Notwithstanding any term or provision hereof or of the Loan Agreement or the Development Agreement to the contrary, neither payment pursuant to this Section, delivery of the mutual releases provided for in this Section, nor Manager's ceasing performance of its obligations hereunder are intended or shall be interpreted to release or excuse either Party from liability arising from any act or omission occurring before the date of the buyout or relieve, excuse or in any way limit the Tribe's or the Enterprise Entity's obligation to repay all amounts due to Manager or Lender, including, without limitation: (i) to the amounts due under the Loan Agreement (including principal and interest); and (ii) to any other loans or advances Manager has made to the Tribe or the Enterprise Entity, including, without limitation: (a) repayment of the Self-Sufficiency Note, (b) repayment of the Exclusivity Waiver Note, (c) repayment of the Interim Promissory Note, (d) advances made pursuant to Section 8.12 of this Agreement, (e) repayment of all Deficiency Payments Manager has made to the Tribe or the Enterprise Entity pursuant to Section 5.5 of this Agreement, and (f) reimbursement for any payment Manager or an Affiliate thereof pays to Lender pursuant to the terms of the Loan Agreement. The Tribe or the Enterprise Entity shall retain title to all Furniture and Equipment, Enterprise and Gaming Facility fixtures, improvements, supplies, equipment,

funds and accounts, subject to the rights of Manager under the Security Agreement, to the rights of Manager to any accrued and unpaid Management Fees based on Net Revenues due under Section 5 of this Agreement and the payment of all amounts due Manager pursuant to this Section.

3.24 Tribe's Discretionary Buy-Out. Subject to the last sentence of this Section 3.24, the Tribe shall have the right to terminate this Management Agreement and to buy out the interests of Manager herein effective as of any date from the twenty fourth (24th) through the sixtieth (60th) month of the Term of this Agreement upon written notice given at least six (6) months prior to the effective date of the buy out paying Manager an amount equal to ninety percent (90%) of the figure calculated by multiplying: (i) the average Management Fee due and payable to Manager pursuant to and in accordance with the terms and provisions of this Agreement for the twelve (12) months immediately preceding the payment date provided for herein, and (ii) the number of months remaining during the Term (including the month in which the payment date provided for herein occurs). Such obligation shall be paid in cash within ninety (90) days of the determination of the amount to be paid. Notwithstanding the foregoing, the exercise of such right shall not relieve, excuse or in any way limit the Tribe's or the Enterprise Entity's obligation to repay all amounts due to Manager or Lender, including, without limitation: (i) to the amounts due under the Loan Agreement (including principal and interest); and (ii) to any other loans or advances Manager has made to the Tribe or the Enterprise Entity, including, without limitation: (a) repayment of the Self-Sufficiency Note, (b) repayment of the Exclusivity Waiver Note, (c) repayment of the Interim Promissory Note, (d) repayment of the Tribal Member Note, (e) advances made pursuant to Section 8.12 of this Agreement, (f) repayment of all Deficiency Payments Manager has made to the Tribe or the Enterprise Entity pursuant to Section 5.5 of this Agreement, and (g) reimbursement for any payment Manager or an Affiliate thereof pays to Lender pursuant to the terms of the Loan Agreement. The Tribe or the Enterprise Entity shall retain title to all Furniture and Equipment, Enterprise and Gaming Facility fixtures, improvements, supplies, equipment, funds and accounts, subject to the rights of Manager under the Security Agreement, to the rights of Manager to any accrued and unpaid Management Fees based on Net Revenues due under Section 5 of this Agreement and the payment of all amounts due Manager pursuant to this Section. Notwithstanding anything in this Section 3.24 to the contrary, the Tribe shall not have the right to terminate this Management Agreement or buy out the interests of Manager herein if the Tribe and the Developer are currently evaluating plans for or are actively engaged in an expansion of the Gaming Facility.

SECTION 4

LIENS

4.1 Liens. Subject to the exceptions hereinafter stated in Section 4.2, the Tribe specifically warrants and represents to Manager that during the Term of this Agreement, it shall not act in any way whatsoever, either directly or indirectly, to cause any person or entity to become an encumbrancer or lien holder of the Property, the Enterprise or the Gaming Facility, or to allow any person or entity to obtain any interest in this Agreement without the prior written consent of Manager, and, where applicable, consent of the United States or any other Governmental Authority. Manager specifically warrants and represents to the Tribe that during

the term of this Agreement, Manager shall not act in any way, directly or indirectly, to cause any person or entity to become an encumbrancer or lien holder of the Property, the Enterprise or the Gaming Facility, or to obtain any interest in this Agreement without the prior written consent of the Tribe, and, where applicable, the United States. The Tribe, the Enterprise Entity and Manager shall keep the Gaming Facility and Property free and clear of all enforceable mechanics' and other enforceable liens resulting from the construction of the Gaming Facility and all other enforceable liens which may attach to the Gaming Facility or the Property. If any such lien is claimed or filed, it shall be the duty of the Party creating or allowing the lien to discharge the lien within thirty (30) days after having been given written notice of such claim, either by payment to the claimant, by the posting of a bond and the payment into the court of the amount necessary to relieve and discharge the Property from such claim, or in any other manner which will result in the discharge or stay of such claim, and Manager is authorized to act in behalf of the Tribe or the Enterprise Entity to discharge any liens. The costs of removal or bonding shall be an Operating Expense if the obligation secured by the lien would properly have been an Operating Expense.

4.2 Exceptions. To secure additional financing for any aspect of the operation, maintenance, management and capital improvement of the Enterprise, the Tribe or the Enterprise Entity may grant to a prospective lender or financier a security interests in the Net Revenue, the Furnishings and Equipment, any other personal property purchased with the proceeds of the Loan, or any other revenue, asset, or claim, whether tangible or intangible, of the Tribe or of the Enterprise Entity or of the Enterprise, provided, however, that any such security interest shall be subordinated to the security interest the Tribe and the Enterprise Entity have granted or will grant Manager and Lender hereunder and under the Loan Agreement securing: (i) repayment of the Loan in full pursuant to and in accordance with the terms and provisions of the Loan Agreement, (ii) repayment of all loans or advances Manager makes to the Tribe or the Enterprise Entity pursuant to 5.5 and 8.12 hereof, as the same shall become due and payable hereunder, and (iii) payment of the Management Fee as the same becomes due and payable pursuant to Section 5.1. Notwithstanding the generality of the foregoing, prior to incurring any such additional debt, the Tribe or the Enterprise Entity shall afford Manager the opportunity to provide such additional financing on terms substantially similar to the terms offered by any prospective investor. Manager, upon request, shall cooperate with, and comply with the reasonable requests of, the Enterprise, the Tribe or the Enterprise Entity, from time to time, in connection with efforts to obtain any financing. Such cooperation shall include, without limitation, modifications to this Agreement as may be reasonably requested by the Enterprise, the Tribe or the Enterprise Entity in connection with obtaining, or endeavoring to obtain, any financing; provided, however, that such modifications shall not materially increase any of Manager's obligations hereunder or decrease Manager's rights hereunder. This Section 4.2 shall not diminish Developer's obligation to undertake all commercially reasonable efforts in making or arranging for a Loan to the Tribe to finance the design, development, construction and initial equipping of the Gaming Facility.

SECTION 5
MANAGEMENT FEE, REIMBURSEMENTS, DISBURSEMENTS, AND OTHER
PAYMENTS BY MANAGER

5.1 Management Fee. Subject to the provisions of Section 5.4, and the Tribe's rights under Section 3.18.3, on or before the 21st day of each month after the first calendar month in which the Commencement Date occurs, Manager is authorized by the Tribe to pay itself from the Enterprise Bank Account(s), the Management Fee. The Management Fee shall be paid by Manager from the Enterprise Bank Account(s).

5.2 Disbursements. As and when received by Manager, Gross Revenues shall be deposited in the Depository Account created pursuant to Section 3.18.2 of this Agreement. There shall, in turn, be disbursed by Manager, on a monthly basis, for and on behalf of the Tribe, funds from the Enterprise Bank Account(s) to pay, to the extent available, Operating Expenses and thereafter the items identified in Section 5.4 of this Agreement, in the priority specified in that Section.

5.3 Adjustment to Bank Account. After the disbursements pursuant to Section 5.2, and establishment of any additional reserves into the Enterprise Bank Account(s) for future disbursements pursuant to the Operating Budget and Annual Plan, or as Manager deems necessary and as are approved by the Tribe, taking into account anticipated cash flow and Operating Expenses, any excess funds remaining in the Enterprise Bank Account(s) over the Minimum Balance, the Capital Replacement Reserve, and such additional reserves approved by the Tribe, shall be disbursed monthly in accordance with Section 5.4.

5.4 Payment of Fees and Tribal Disbursement. Within 21 days after the end of each calendar month of operations, Manager shall calculate Gross Revenues, Operating Expenses, and Net Revenues of the Enterprise for the previous month's operations and the year's operations to date. Such Net Revenues shall be disbursed on a monthly basis from the Enterprise Bank Account(s), to the extent available, to pay the scheduled items to the extent due and payable and earned in the following order of priority:

- (i) the Minimum Guaranteed Monthly Payment described in Section 5.5;
- (ii) a portion of the Management Fee in the monthly amount of [] dollars []] 64
- (iii) the interest portion only of payments due on the Note or as otherwise required by the Loan Agreement (and if payments are due other than monthly, a reserve equal to a proportionate amount of the scheduled quarterly payment shall be deposited in a designated Enterprise Bank Account for such payment, and may be invested in accordance with the Enterprise Investment Policies pending payment);
- (iv) payment to the Tribe of the sum of [] dollars [] per month, or so much thereof as can be paid from remaining Net Revenues, with any shortfall to be accrued without interest;
- (v) the balance of the Management Fee;

- (vi) the principal portion only of payments due on the Note or as otherwise required by the Loan Agreement (and if payments are due other than monthly, a reserve equal to a proportionate amount of the scheduled quarterly payment shall be deposited in a designated Enterprise Bank Account for such payment, and may be invested in accordance with the Enterprise Investment Policies pending payment);
- (vii) repayment to Manager of any payments Manager or any Affiliate thereof makes to Lender pursuant to the terms and provisions of the Loan Agreement;
- (viii) repayment to Manager of any advances or contributions Manager makes to the Enterprise pursuant to Section 8.12 of this Agreement;
- (ix) recoupment of Deficiency Payments Manager makes to the Tribe or the Enterprise Entity pursuant to Section 5.5 of this Agreement;
- (x) payments due on the Self-Sufficiency Note;
- (xi) payments due on the Tribal Member Note;
- (xii) payments due on the Exclusivity Waiver Note;
- (xiii) payments due on the Interim Promissory Note;
- (xiv) payment to the Tribe of any prior period shortfalls in payments under clause (iv) above not earlier paid under this clause (xiv);
- (xv) payment to Manager of any remaining unpaid Management Fee for any prior period; and
- (xvi) Capital Replacement Reserve contributions pursuant to Section 3.13 of this Agreement.

All remaining Net Revenues and any other Enterprise cash not needed to pay or fund any of the foregoing (the "Tribal Distribution Payment") shall be distributed to the Tribe at the same time the Management Fee, including any prior period shortfalls, is paid.

Within sixty (60) days after the end of each Fiscal Year a re-computation shall be made of the Management Fee based on Net Revenues for that Fiscal Year and any payment reimbursement necessary to be made to conform the Management Fee to such re-computed amount shall be made, and any resulting adjustment to amounts paid to the Tribe as Tribal Distribution Payments shall be computed and paid or repaid, as the case may be.

5.5 Minimum Guaranteed Monthly Payment. Manager shall disburse to the Tribe dollars per month (the "Minimum Guaranteed Monthly Payment"). The Minimum Guaranteed Monthly Payment shall be payable to the Tribe in arrears on the 21st day of each calendar month commencing in the month following the month in which the Commencement Date occurs, which payment shall have the priority specified in Section 5.4.

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If the Commencement Date is a date other than the first day of a calendar month, the first payment will be prorated from the Commencement Date to the end of the month. Minimum Guaranteed Monthly Payments shall be charged against the Tribe's Monthly Distribution Payment for each month; provided, however, where the Net Revenues in a given month are less than the Minimum Guaranteed Monthly Payment, Manager shall pay the funds necessary to compensate for the deficiency (the "Deficiency Payment") from its own funds. Manager shall have the right to recoup all Deficiency Payments from the Tribe's Monthly Distribution as and when such funds are available after payment to the Tribe of its Minimum Monthly Distribution for the then current month. If during a given month Gaming does not occur for a portion of the month, the Minimum Guaranteed Monthly Payment shall be reduced pro rata, in proportion to the portion of the month, in days, in which Gaming does not occur. If no Gaming takes place in a given month, and this Agreement has been terminated in accordance with Section 3.4.4, the Minimum Guaranteed Monthly Payments shall cease upon termination of the Agreement. Except as provided in the preceding sentence of this Section 5.5, Manager's obligation to pay the Tribe the Minimum Guaranteed Monthly Payment is unconditional, and shall not be affected by the actual level of funds generated by the Enterprise.

5.6 Payment of Net Revenues. The amounts paid to the Tribe pursuant to this Section 5 shall be payable to the Tribe's bank account specified by the Tribe in a notice to Manager pursuant to Section 8.2.

SECTION 6 **TRADE NAMES, TRADE MARKS AND SERVICE MARKS**

6.1 Enterprise Name. The Enterprise shall be operated under a business name which readily identifies the Gaming Facility to the public along with a reference to the Tribe or such other name as the Parties may agree (the "Enterprise Name").

6.2 Marks. Prior to the Commencement Date and from time to time during the Term hereof, Manager agrees to erect and install, in accordance with local codes and regulations, all signs Manager deems necessary in, on or about the Gaming Facility, including, but not limited to, signs bearing the Enterprise Name. All Trade Names, Trade Marks, Service Marks, Logos, trade dress designs, and color schemes of the Enterprise shall be the property of the Tribe and Tribe may register the same in its name.

6.3 Brand Marks. The Tribe shall not license or brand or seek to license or brand the Gaming Facility with the names, marks or intellectual property of an independent third-party company other than with the mutual agreement of the Parties. This limitation upon third-party branding shall not apply to the Tribe's use of the "Sugar Bowl" name and marks.

SECTION 7 **TAXES**

7.1 State and Local Taxes. If the State or any local government attempts to impose any tax including any possessory interest tax upon any Party to this Agreement or upon parties in interest, such Party may resist such attempt through legal action. The costs of such action and the compensation of legal counsel shall be an Operating Expense. Any such tax shall constitute an Operating Expense. This Section shall in no manner be construed to imply that any Party to this Agreement or the Enterprise or Enterprise Entity is liable for any such tax or constitute a waiver of Tribal sovereign immunity.

7.2 Tribal Taxes. The Tribe agrees that neither it nor any agent, agency, Affiliate or representative of the Tribe will impose any taxes, fees, assessments, or other charges of any nature whatsoever on payments of any debt service to Manager or any of its Affiliates or to any lender furnishing financing for the Gaming Facility or for the Enterprise, or on the Enterprise, the Gaming Facility, the revenues therefrom or on the Management Fee as described in Section 5.1 of this Agreement; provided, however, the Tribe may assess fair and reasonable license fees reflecting reasonable regulatory costs incurred by the Tribal Gaming Commission subject to the limitations contained in this Agreement. The Tribe further agrees that neither it nor any agent, agency, Affiliate or representative will impose any taxes, fees, assessments or other charges of any nature whatsoever on the salaries or benefits, or dividends paid to, any of Manager's stockholders, officers, directors, or employees, or any of the employees of the Enterprise; or any provider of goods, materials, or services to the Enterprise, provided, however, the Tribe may assess license fees reflecting reasonable regulatory costs incurred by the Tribal Gaming Commission reflecting reasonable regulatory costs incurred by the TGC. Manager retains the right, subject to Section 16 of this Agreement, to terminate this Agreement and all accompanying agreements, and to be paid Liquidated Damages, if it reasonably determines that any statute, law, code or regulation of the Tribe renders operation of the Enterprise uncompetitive.

7.3 Compliance with Internal Revenue Code. Manager shall comply with all applicable provisions of the Internal Revenue Code.

SECTION 8 **GENERAL PROVISIONS**

8.1 Situs of the Contracts. This Agreement shall be deemed entered into in Contra Costa County, California, provided that Section 16.1.5 shall determine the Applicable Law governing any dispute arising hereunder.

8.2 Notice. Any notice required to be given pursuant to this Agreement shall be delivered to the appropriate Party by overnight delivery service, Certified Mail Return Receipt Requested, or any other method, including without limitation electronically, provided that the method must be reasonably anticipated to produce a permanent, written record of actual delivery. Notices shall be addressed as follows:

If to the Tribe: **Scotts Valley Band of Pomo Indians**
 81 Parr Blvd.
 P O Box 2008

**Richmond, California 94802
Attn: Tribal Chair**

If to Manager: **Seminole SV Entertainment, LLC
1551 Sandspur Rd.
Maitland, Florida 32751
Attn: Managing Member**

With a copy to:

or to such other different address(s) as Manager or the Tribe may specify in writing using the notice procedure called for in this Section 8.2. Any such notice shall be deemed given upon actual receipt as indicated on the delivery receipt referenced above or, if no receipt is available, three days following mailing or transmittal.

8.3 Authority to Execute and Perform Agreement. The Tribe and Manager represent and warrant to each other that they each have full power and authority to execute this Agreement and to be bound by and perform the terms hereof, which terms and provisions shall constitute valid and binding obligations of the respective Party. On request, each Party shall furnish the other evidence of such authority.

8.4 Relationship. Manager and the Tribe and the Enterprise Entity shall not be construed as joint venturers or partners of each other by reason of this Agreement and none shall have the power to bind or obligate the others except as expressly set forth in this Agreement.

8.5 Manager's Contractual Authority. Manager is authorized to make, enter into and perform in the name of and for the account of the Tribe or the Enterprise Entity, doing business as the Enterprise, such contracts deemed necessary by Manager to perform its obligations under this Agreement, provided such contracts comply with the terms and conditions of this Agreement, including, but not limited to, Section 3.1.2, and provided such contracts do not obligate the Enterprise Entity or the Tribe to pay sums not approved in the Operating Budget and Annual Plan or the Capital Budget, or deemed included within the Operating Plan and Annual Budget pursuant to the terms hereof.

8.6 Further Actions. The Tribe or the Enterprise Entity and Manager agree to execute all contracts, agreements and documents and to take all actions reasonably necessary to comply with the provisions of this Agreement and the intent hereof.

8.7 Defense. Except for disputes between the Tribe or the Enterprise Entity and Manager and claims relating to the Tribe's status as a Tribe or the status of the Property as Indian lands, Manager shall bring and/or defend any claim or legal action brought against Manager or the Enterprise Entity or the Tribe (with respect to the Enterprise), individually, jointly or

severally, or any Enterprise Employee, in connection with the operation of the Enterprise. Manager shall not settle any claim against the Tribe or the Enterprise Entity without the consent of the Tribe, which may be granted or withheld in the sole and absolute discretion of the Tribe. Subject to the Tribe's selection, and approval of its legal counsel for the Enterprise Entity, Manager shall supervise legal counsel, accountants and such other professionals, consultants and specialists as Manager deems appropriate to defend any such claim or causes of action. Manager shall not preclude counsel selected by the Tribe from representing the Tribe or the Enterprise Entity with respect to the Tribe or the Enterprise Entity. Nothing in this section shall limit the right of the Tribe to select, and employ legal counsel, but no legal action shall be commenced with respect to the operation of the Enterprise except with the concurrence of the Tribe and Manager. Manager shall reasonably cooperate with the Tribe and the Enterprise Entity in commencing or defending legal actions pertaining to taxation of the Enterprise or the legal status of the Enterprise or the Enterprise Entity as subject to the sovereignty of the Tribe provided that in the event the Tribe wishes to pursue an issue that does not have a material financial consequence to the Enterprise, then the obligation of the Enterprise to fund such action shall be limited to an amount that bears a reasonable relationship to the benefits to be gained by the Enterprise. In the event that the Tribe and Manager are unable to agree on whether or not to pursue legal action with respect to the Enterprise, or in the event that the Tribe and Manager have other disagreements regarding the employment and/or management of legal counsel or the manner in which such legal action is pursued, then the Tribe and Manager shall forthwith resolve such differences by mediation as provided in Section 16.2. Manager may retain and supervise legal counsel to serve in addition to the counsel selected by the Tribe. Except to the extent they may result from the gross negligence or willful misconduct by Manager, or its breach of this Agreement, all liabilities, costs and expenses, including reasonable attorneys' fees and disbursements incurred in defending and/or settling any claims or legal action which are not covered by insurance, shall be an Operating Expense, or, if incurred prior to the Commencement Date, shall be a Start-Up Expense. Nothing contained herein is a grant to Manager of the right to waive the Tribe's or the Enterprise Entity's sovereign immunity. That right is strictly reserved to the Tribe, as to matters affecting the Tribe or the Enterprise Entity.

8.8 Waivers. No failure or delay by Manager or the Tribe to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy consequent upon the breach thereof, shall constitute a waiver of any covenant, agreement, term, or condition of this Agreement and no breach thereof shall be waived, altered or modified except by written instrument. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

8.9 Interpretation and Captions. Where used in this Agreement, the following expressions shall have the following meanings respectively unless the context or specific language otherwise requires or acknowledges: (i) the singular includes the plural and vice versa; (ii) a reference to a gender includes all genders; (iii) a reference to a natural person includes the heirs, executors, administrators and permitted assigns of that person and a reference to a corporate body includes the successors and permitted assigns of that corporate body; (iv) a reference to a person or corporate body shall be taken to include that person or body acting in a

trustee or other representative capacity; (v) a reference to two or more persons means those persons jointly and severally; (vi) where a word or expression is defined, other parts of speech and grammatical forms of that word or expression have corresponding meanings; (vii) captions and headings are for ease of reference and do not affect the construction of this document; (viii) a reference to a statute shall include all amendments for the time being in force and any other statute enacted in substitution therefore and all regulations, proclamations, ordinances and by-laws for the time being in force under that statute and any notice, demand, order, direction, requirement or obligation pursuant to or under that statute or those regulations, proclamations, ordinances and by-laws; (ix) a reference to a recital, exhibit, section, clause, schedule or annexure is to a recital, exhibit, section, clause, schedule or annexure of or to this document and a recital, schedule or annexure forms part of this document; (x) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, restated or replaced from time to time; (xi) a reference to a consent or approval of a Party means the prior written consent or approval of that Party in its reasonable discretion (unless indicated to the contrary); (xii) a right includes a remedy, authority and power; (xiii) a reference to money means the lawful currency of the United States of America; (xiv) if the day on which any act, matter or thing is to be done under or pursuant to this document is not a Business Day (being any day other than a day on which banking institutions are required or authorized to be closed in the State), that act, manner or thing, if it involves a payment other than a payment that is due on demand, shall be done on the preceding Business Day; and in all other cases, shall be done no later than the next Business Day.

8.10 Severability. If any of the terms and provisions hereof shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any of the other terms or provisions hereof. If, however, any material part of a Party's rights under this Agreement shall be declared invalid or unenforceable, (specifically including Manager's right to receive its Management Fees) the Party whose rights have been declared invalid or unenforceable shall have the option to terminate this Agreement upon thirty (30) days written notice to the other Party, without liability on the part of the terminating Party.

8.11 Interest. Except as otherwise provided in the Development Agreement and except for Deficiency Payments, any amounts advanced by Manager to the Tribe or the Enterprise Entity related to the operation of the Enterprise shall accrue interest at a rate equal to the greater of: (i) the interest rate provided for in the Interim Promissory Note, (ii) the interest rate provided for under the Loan Agreement, or (iii) a variable rate of _____ percentage point in excess of the "prime rate" as published from time to time in the Wall Street Journal, but in no case in excess of the rate permitted by Applicable Law of California.

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8.12 Operating Capital. After application of all reserves established under Section 3.13 of this Agreement and all other reserves established pursuant to the Loan Agreement, Manager shall provide necessary operating capital to the Enterprise. Manager's obligation under this Section shall not be deemed to require contributions in excess of the minimum amounts necessary to permit the continued operation of the Enterprise, and to comply with Applicable Law and any Legal Requirements. Notwithstanding the foregoing, however, Manager may contribute operating capital in excess of such minimum amounts, provided that such contributions have been approved in advance in writing by the Tribe. Manager shall keep

appropriate records to document all reimbursable expenses paid by Manager, which records shall be made available for inspection by the Tribe or its agents upon request. The Tribe agrees to reimburse Manager with interest from future Net Revenues for money advanced or property contributed by Manager to satisfy obligations of the Tribe or the Enterprise Entity in connection with the Enterprise and/or this Agreement. Interest shall be calculated at the rate determined pursuant to Section 8.11 from the date Manager provides the operating capital for the satisfaction of such obligation to the date reimbursement is made. Manager's sole source of such reimbursement shall be from undistributed and future Net Revenues, payable pursuant to and in accordance with the terms and conditions of Section 5.4 of this Agreement

8.13 Travel and Out-of-Pocket Expenses. To the extent approved by the Tribe, Manager shall be reimbursed for extraordinary travel and out-of-pocket expenses reasonably incurred at the request of the Tribe outside the scope of this Agreement. Subject to the Operating Budget and Annual Plan, all such travel and out-of-pocket expenses of Enterprise Employees reasonably incurred in the performance of their duties shall be an Operating Expense. Normal and usual travel and out of pocket expenses of Manager and its employees, other than the Manager's Employees at the Gaming Facility, shall be paid by Manager and shall not be an Operating Expense.

8.14 Third Party Beneficiary. This Agreement is exclusively for the benefit of the Parties hereto and it may not be enforced by any party other than the Parties to this Agreement and shall not give rise to liability to any third party other than the authorized successors and assigns of the Parties hereto as such are authorized by this Agreement.

8.15 Brokerage. Except for Manager, with respect to securing the Loan, Manager and the Tribe, represent and warrant to each other that neither has sought the services of a broker, finder or agent in this transaction, and neither has employed, nor authorized any other person to act in such capacity. Manager and the Tribe each hereby agrees to indemnify and hold the other harmless from and against any and all claims, loss, liability, damage or expenses (including reasonable attorneys' fees) suffered or incurred by the other Party as a result of the breach of the representation and warranty set forth herein. Nothing contained herein is intended or shall be construed to alter, modify, change or amend the definition of Reimbursable Project Costs contained in the Development Agreement.

8.16 Survival of Covenants. Any covenant, term or provision of this Agreement which in order to be effective must survive the termination of this Agreement, shall survive any such termination.

8.17 Estoppel Certificate. Manager and the Tribe each agree to furnish to the other Party, from time to time upon request, within ten (10) business days of receipt of the request an estoppel certificate in such reasonable form as the requesting Party may request stating whether there have been any defaults under this Agreement known to the Party furnishing the estoppel certificate and such other information relating to the Enterprise as may be reasonably requested.

8.18 Periods of Time. Whenever any determination is to be made or action is to be taken on a date specified in this Agreement, if such date shall fall on a Saturday, Sunday or legal holiday under the laws of the Tribe, Federal government, or the State, then in such event said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

8.19 Exhibits. All exhibits attached hereto are incorporated herein by reference and made a part hereof as if fully rewritten or reproduced herein.

8.20 Successors, Assigns, and Subcontracting. The benefits and obligations of this Agreement shall inure to and be binding upon the Parties hereto and their respective successors and assigns. Subject to the approval rights of the Tribe as set forth below, Manager shall have the right to assign its rights under this Agreement and the Development Agreement only to one or more directly or indirectly wholly-owned subsidiaries of Manager or its successor, and no such assignment shall relieve Manager of its obligations under this Agreement. The Tribe's prior consent, which shall not be unreasonably withheld, conditioned or delayed, shall be required for any assignment or subcontracting by Manager of its rights, interests or obligations as Manager hereunder to any person or entity, and any such assignee or subcontractor must agree in writing to be bound by the terms and conditions of this Agreement. A change in control of Manager shall constitute an assignment of this Agreement by Manager requiring the consent of the Tribe, not to be unreasonably withheld, conditioned or delayed, and this Agreement shall remain in full force and effect between the Tribe and Manager, subject only to Applicable Law and any Legal Requirements. No such change in control shall release Manager of any of its obligations under this Agreement. A change in control of a member of Manager shall not constitute an assignment of this Agreement.

8.21 Permitted Assignment. Any assignment of this Agreement permitted under the Agreement, to the extent mandated by IGRA, shall be subject to approval by the Chairman -- NIGC or his authorized representative after satisfaction of all Legal Requirements. Any assignment by the Tribe shall not prejudice the rights of Manager under this Agreement or the Lender under the Loan Agreement. No assignment authorized hereunder shall be effective until the satisfaction of all Legal Requirements for such assignment. To the extent that the Tribe assigns its rights under this Agreement to an Enterprise Entity or other entity pursuant to this Agreement, then, as a condition precedent to such assignment, the Tribal Council shall pass a resolution to (i) authorize the assignment and acknowledge that the Tribe remains responsible under the terms of this Agreement, (ii) authorize the entity to waive its sovereign immunity pursuant to this Agreement, and (iii) require the new entity to pass a resolution to ratify and agree to be bound by this Agreement and to waive its sovereign immunity.

8.22 Time is of the Essence. Time is of the essence in the performance of this Agreement.

8.23 Confidentiality:

8.23.1 Definition. "Confidential Information" is defined as any information disclosed, whether orally, in writing, or electronically, to the Tribe or Manager, or any officer, director, employee, shareholder, affiliate, agent, Council member, elected official

or attorney thereof, by or on behalf of the Tribe or Manager or any officer, director, employee, shareholder, affiliate, agent or attorney thereof which relates in any way to the Tribe, the Enterprise Entity, Manager, the Gaming Facility, the Enterprise or the Property or which is identified by the Disclosing Party at the time of disclosure as "confidential." As used in this Agreement, the term "Disclosing Party" shall be the Party to this Agreement which discloses or causes the disclosure of Confidential Information, and the term "Receiving Party" shall be the Party to this Agreement which receives Confidential Information, provided, however, that the Receiving Party and the Disclosing Party with respect to any Confidential Information may not be the same Party. Confidential Information may include, without limitation: (i) organizational documents of the Tribe or the Enterprise Entity or Manager, or any member or Affiliate thereof, (ii) any contracts, instruments, agreements or understandings to which either the Tribe, the Enterprise Entity or Manager is a Party and which relates to the Property, the Gaming Facility or the Enterprise (iii) the Feasibility Study or any other studies or financial projections relating to the Property, the Gaming Facility or the Enterprise, regardless of the source of such study or projection. All Parties acknowledge that no Disclosing Party shall be deemed to make any representation or warranty as to the accuracy or completeness of any Confidential Information provided to any Receiving Party or any other party and nothing herein shall be deemed to obligate any Party to disclose any Confidential Information to any other party, or to enter into any transaction with any other party.

8.23.2 Restrictions. The Receiving Party shall hold all Confidential Information in strict confidence, shall prevent unauthorized disclosure of the Confidential Information to any third party, in whole or in part, and shall not use any Confidential Information for any purposes other than pursuing consummation of the transactions contemplated hereunder. The standard of care imposed on the Receiving Party for protecting Confidential Information will be reasonable and prudent care to prevent improper disclosure or use of Confidential Information, including, without limitation, by restricting access to the Confidential Information to only those employees or other persons who need access to it for purposes of the Receiving Party's performance of the obligations the Receiving Party has assumed and agreed to perform hereunder, and by obligating such persons to comply with the restrictions provided in this Agreement. In the event of loss or theft of any documents, items of work in progress, or any work products embodying Confidential Information, the Receiving Party shall immediately notify the Disclosing Party.

8.23.3 Copying. The Receiving Party shall not copy or reproduce Confidential Information in any form, without the written consent of the Disclosing Party, and shall keep accurate records of all copies or reproductions of Confidential Information made by the Receiving Party or persons on its behalf, which records shall be made available to the Disclosing Party upon request.

8.23.4 Permissible Disclosures. A Receiving Party shall not be subject to the obligations of this Agreement with respect to Confidential Information which: (i) is or becomes known publicly through no wrongful act of the Receiving Party or persons acting on its behalf; or (ii) is disclosed to the Receiving Party by a third party under no

obligation of secrecy or confidentiality to the Disclosing Party and to whom the Disclosing Party disclosed the Confidential Information voluntarily; or (iii) is approved for release by written authorization of the Disclosing Party; or (iv) is subject to a valid order of a judicial or other Governmental Authority, provided, however, that in the case of a governmental order, the Receiving Party shall notify the Disclosing Party of the order in a reasonable time prior to disclosure in order to allow the Disclosing Party the opportunity to challenge the order or otherwise protect the Confidential Information.

8.23.5: No License Granted. No right or license, whether expressed or implied, in the Confidential Information is granted to the Receiving Party other than to use the Confidential Information in the manner and to the extent authorized by this Agreement, for evaluation by the Receiving Party and for the performance of the obligations the Receiving Party has assumed and agreed to perform hereunder. Upon termination of this Agreement pursuant to the terms and provisions hereof, the Receiving Party shall promptly return to the Disclosing Party, upon request, all Confidential Information and all copies thereof, and notes, extracts or derivative information related thereto, in whatever form of storage or retrieval. No information, release, public announcement, confirmation or denial concerning any potential transaction, the fact that discussions, negotiations or evaluations are taking place, or the terms, conditions or other facts with respect thereto will be made by any Party without prior coordination with, and express approval of each of the other Parties.

8.23.5 Other Information. Whether or not it constitutes Confidential Information, Manager shall treat as confidential and, except as necessary to properly carry on the business of the Enterprise, shall not disclose to any third party any information about the Enterprise or its business or employees, including financial information.

8.24 Patron Dispute Resolution. Manager shall have the authority to resolve all patron disputes consistent with the requirements of the Gaming Ordinance. In the event a patron is dissatisfied with Manager's final resolution of a dispute, the patron may seek such redress as may be authorized under the rules and regulations of the Tribal Gaming Commission, after all dispute resolution procedures adopted by Manager have been exhausted. Manager and the Tribal Gaming Commission shall advise each other of any patron disputes that have been resolved and the manner of the resolution. Manager, the Tribal Executive Manager and the Tribal Gaming Commission shall give each other immediate notice of any patron dispute or which involves any claim of wrongdoing or misconduct by Manager or any Enterprise Employee.

8.25 Modification. Any change to or modification of this Agreement must be in writing signed by all Parties hereto and shall be effective only upon approval by the Chairman -- NIGC of the NIGC, the date of signature of the Parties notwithstanding.

8.26 Indemnification. Each Party shall hold harmless and indemnify the other from and against any and all liability alleged to arise from any prior agreements entered into by such Party with any persons or entities in connection with development of a Gaming Facility or any other project and with respect to any other liability arising as a result of the acts or omissions of

such Party undertaken without the consent of the other or in accordance with the terms of this Agreement and the Development Agreement. Such indemnification shall include payment of reasonable expenses for counsel of the indemnified Party's choice and all costs and charges associated with such litigation including expert witnesses, consultants, counsel, court costs, arbitration fees, and all other costs. The terms of this Section shall be expressly subject to Section 16.1 of this Agreement.

8.27 Waiver of Jury Trial. THE PARTIES IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER PARTY.

8.28 Class Action. THE TRIBE AGREES THAT ANY DISAGREEMENT BETWEEN THE TRIBE AND MANAGER SHALL BE CONSIDERED UNIQUE AS TO ITS FACTS AND SHALL NOT BE BROUGHT AS A CLASS ACTION, AND THE TRIBE WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO BRING A CLASS ACTION OR MULTI-PLAINTIFF, CONSOLIDATED OR COLLECTIVE ACTION AGAINST MANAGER OR ANY OF ITS AFFILIATES OR MEMBERS.

8.29 Public Announcements. No notices to third parties or other publicity, including press releases, concerning the existence of this Agreement or any of the transactions contemplated hereby shall be made by either Party hereto or their respective affiliates unless agreed to by each of the Parties hereto, except to the extent required by Applicable Law.

SECTION 9 **WARRANTIES**

9.1 Noninterference in Tribal Affairs. Manager agrees not interfere in or attempt to wrongfully influence the internal affairs or government decisions of the Tribe's government by offering or promising any benefit or by making any direct or indirect threat to the personal safety or financial status of any person, or by any other action, except for actions in the normal course of business of Manager that relate to the Enterprise. As of the date of this Agreement, the Tribe acknowledges that Manager has not interfered or wrongfully interfered in the internal affairs of the Tribe.

9.2 Prohibition of Payments to Prohibited Persons. Manager represents and warrants that no payments have been or will be made by Manager or Manager's affiliates, to any Prohibited Person for the purpose of obtaining any special privilege, gain, advantage or consideration.

9.3 Prohibition of Hiring Prohibited Persons. No Prohibited Person may be employed by the Enterprise Entity or by Manager or its affiliates, or have any direct or indirect financial interest in this Management Agreement. The Tribe will identify all such persons to Manager in writing and take reasonable steps to keep the list current. Manager shall not be held responsible if any person not on such written list is employed.

9.4 Prohibition of Financial Interest in Enterprise. No Prohibited Person shall have any direct or indirect financial interest in the Enterprise Entity or the Enterprise greater than the interest of any other member of the Tribe, and no Prohibited Person shall purchase or hold an interest or stock in Manager, or Manager's affiliates.

9.5 Prohibited Person.

(1) The Tribe and Manager covenant that neither it nor any of its constituent partners, shareholders or members associated with the execution of this Agreement, will knowingly allow a Prohibited Person to participate, directly or indirectly, in the ownership of the Gaming Facility or the Enterprise during the Term. "Prohibited Person" means any Person:

(a) listed in the Annex to, or otherwise subject to the provisions of, Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order") and/or a Person who is identified as or affiliated with a Person designated as a terrorist, or associated with terrorism or money laundering pursuant to regulations promulgated in connection with the USA PATRIOT Act;

(b) that is owned or controlled by, or acting for or on behalf of, any Person that is listed in the Annex to, or is otherwise subject to the provisions of, the Executive Order;

(c) with whom a regulated lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;

(d) who commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order;

(e) that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, <http://www.treas.gov/ofac/tllsdn.pdf> or at any replacement website or other replacement official publication of such list;

(f) that are directly or indirectly owned or controlled by the government of any country that is subject to an embargo or economic or trade sanctions by the United States government or acting on behalf of a government of any country that is subject to such an embargo;

(g) that are or will be involved in any aspect of the operation of the Tribe's Gaming activities who has engaged in any activity that would make it a person/entity that may or could be prohibited from being licensed to operate, develop, construct or manage the Gaming Facility;

(h) who has been convicted of or pled guilty (or the equivalent) to a felony, or any other crime or offense (even if not a crime), that is reasonably likely, in Manager's reasonable opinion (the exercise of which shall consider whether the Tribe or its affiliates had actual or constructive knowledge of the foregoing), to affect adversely any Gaming license issued to Manager or its affiliates;

(i) who is otherwise identified by government or legal authority as a Person with whom Manager is prohibited from transacting business, excluding hourly non-essential individuals employed by the Tribe whose scope of employment does not include any gaming-related activities or activities that may be essential to the operation of the Project (such employee, an "Ancillary Employee");

(j) who is an affiliate of or affiliated with a Person listed above, excluding any Ancillary Employees and any *de minimis* affiliations between individuals of which each Party did not have actual or constructive knowledge; and

(k) any then current Member of the Tribal Council or of the TGC, any elected Tribal official, or elected or appointed member of the governing body of the Enterprise Entity, or any person appointed by the Tribe or the Tribal Council under any Tribal Resolution or otherwise to act as a representative or agent of the Tribe or Tribal Council with respect to Manager or the Enterprise, or otherwise having management responsibility for this Management Agreement, or the spouse of any of such persons.

(2) The Tribe and Manager represents and warrants that neither it, nor any of its Affiliates or constituent partners, members, shareholders, nor any of its or their respective Affiliates, is a Gaming Prohibited Person. A "Gaming Prohibited Person" means:

(a) a Person who is known to be, or who, after reasonable due diligence should have been known to be, a Person who, based on their reputation in the gaming industry or any other relevant factors, is a Person that a Governmental Authority is likely to question the suitability of a business relationship with in connection with a Gaming facility;

(b) a Person who has applied for and been denied a Gaming license in any jurisdiction that is reasonably likely, in Manager's reasonable judgment (the exercise of which shall consider whether or not the Tribe or its Affiliates had actual or constructive knowledge of the foregoing), to adversely affect any Gaming license issued to Manager or its Affiliates or members; or

(c) a Person who has been subject to a suspension, revocation or withdrawal of a Gaming license in any jurisdiction;

Each of Manager and the Tribe covenants that during the Term neither it nor any of its affiliates will, directly or indirectly, knowingly engage in a business relationship with a Gaming Prohibited Person. For purposes of the foregoing, "engage in a business relationship" means the acquisition of equity interests in such Person, the acquisition of equity interests by such Person in the Parties hereto or their affiliates, or the formation of a joint venture, partnership or similar

venture with such Person. For the avoidance of doubt, the purchase and sale of goods or services by or to such Person shall not constitute “engaging in a business” with such Person.

SECTION 10
EVENT OF DEFAULT AND TERMINATION

10.1. Events of Default by the Tribe. Each of the following shall be an Event of Default:

- (i) The Tribe or the Enterprise Entity, through its own actions, fails to make any payment to Manager when such payment is due pursuant to the terms of this Agreement, including, without limitation, any payment due Manager pursuant to Section 5 hereof, and such failure shall remain uncured pursuant to the terms and provisions of Section 10.5 of this Agreement.
- (ii) The occurrence of any event referred to in the Interim Promissory Note, Exclusivity Waiver Note, Tribal Member Note or Self-Sufficiency Note that permits Developer to declare such Note(s) immediately due and payable in full.
- (iii) The Tribe or the Enterprise Entity shall default in the due observance or performance of any of its obligations, representations, warranties or covenants hereunder or under the Loan Agreement or the Development Agreement, and shall not have commenced and diligently pursued the cure of such default pursuant to Section 10.5 of this Agreement.
- (iv) Manager reasonably believes that its performance of any obligation to the Tribe imposed under this Agreement may reasonably be expected to result in the breach of any Legal Requirement or Applicable Law and the Parties have been unable to agree upon waiver or change of such performance within ten (10) days’ after written notice by Manager.
- (vi) Any material representation or warranty that the Tribe has made under this Agreement shall prove to have been untrue when made, or is later untrue without notice to Manager of the change in status and written acceptance by Manager of the changed status.
- (vii) The Tribe fails to take and pursue any and all reasonable steps necessary to satisfy all Legal Requirements for any of this Agreement, the Loan Agreement or the Development Agreement to constitute valid and binding obligations of the Tribe enforceable pursuant to the terms and provisions hereof or thereof under Applicable Law, or, without good cause, the Tribe withdraws any of the aforementioned Documents from consideration for approval by the BIA, the NIGC or any other Governmental Authority whose approval is required under Applicable Law for such Documents to constitute valid and binding obligations of the Tribe.

- (viii) The Tribe or the Enterprise Entity shall: (i) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) commence a voluntary case under the federal bankruptcy laws (as now or hereafter in effect), (v) be adjudicated insolvent or be the subject of an order for relief under any chapter of the Bankruptcy Code (11 U.S.C. §101, et. seq.), (vi) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, or (vii) acquiesce to, or fail to controvert in a timely manner, any petition filed against it in an involuntary case under such bankruptcy laws.
- (ix) A case or other proceeding shall be commenced against, and without the application or consent of the Tribe or the Enterprise Entity in any court of competent jurisdiction, seeking the liquidation, reorganization, dissolution, winding up, or composition or readjustment of debts of the Tribe or the Enterprise Entity, the appointment of a trustee, receiver, custodian, liquidator or the like of the Tribe, or the Enterprise Entity, as appropriate, or any similar action with respect to the Tribe or the Enterprise Entity under the federal bankruptcy laws (as now or hereafter in effect) or any other laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and such case or proceeding shall continue undismissed, or unstayed and in effect, for a period of sixty days, or an order for relief against the Tribe or the Enterprise Entity shall be entered in an involuntary case under such bankruptcy laws.
- (x) Denying or failing to grant Manager any tribal gaming license, which any Legal Requirement obligates Manager to obtain in connection with Enterprise, if taken in bad faith, or without substantial justification or is clearly unreasonable.
- (xi) Suspending or revoking any gaming license which any Legal Requirement obligates Manager to obtain in connect with the Enterprise as a result of bad faith action on the part of the Tribal Gaming Commission if taken in bad faith, or without substantial justification or is clearly unreasonable.
- (xii) Except as required by under federal or state law, amending the Tribal Gaming Ordinance or adopting, issuing, or enforcing against Manager any law, ordinance or regulation which materially and adversely affects Manager's rights or materially and adversely changes Manager's obligations under this Agreement, or Manager's performance of this Agreement and the Development Agreement.

- (xiii) Enacting any law impairing the obligations of contracts entered into in furtherance of the Enterprise, including but not limited to, this Agreement, the Development Agreement and the Loan Agreement. Any action by the Tribe, the Tribal Council, or any committee, agency, board or other official body, officer or official of the Tribe, by exercise of the police power or otherwise, to modify, amend, or in any manner impair the obligations of contracts entered into in furtherance of the Enterprise.

10.2 Manager's Rights and Remedies. Upon the occurrence of an Event of Default caused by Tribe or the Enterprise Entity, Manager shall provide the Tribe and the Enterprise Entity with written notice of the Event of Default, which notice shall, among other things, specifically advise the Tribe and the Enterprise Entity of the actions the Tribe or the Enterprise Entity must take, or refrain from taking, to cure such Event of Default, and the Tribe's or the Enterprise Entity's right to cure such Event of Default pursuant to and in accordance with the terms and provisions of Section 10.5 of this Agreement. If the Event of Default described in the notice provided for above remains uncured under the terms of Section 10.5 hereof, Manager may, upon written notice to the Tribe and the Enterprise Entity, cease performance of any further services under this Agreement.

Further, the Tribe specifically acknowledges and agrees that upon the occurrence of an Event of Default, there may be irreparable harm to Manager and that damages resulting from the Event of Default will be difficult to determine; therefore, upon the occurrence of an Event of Default which remains uncured pursuant to and in accordance with the terms and provisions of Section 10.5 hereof, and provided Manager elects to terminate this Agreement as a result thereof, the Tribe shall, pay Manager the Liquidated Damages in cash within ninety (90) days of the determination of the amount to be paid.

Notwithstanding any term or provision hereof or of the Loan Agreement or the Development Agreement to the contrary, neither payment pursuant to this Section nor Manager's ceasing performance of its obligations hereunder are intended or shall be interpreted to relieve, excuse or in any way limit the Tribe's or the Enterprise Entity obligation to repay, subject to any contractual limitations on sources of repayment, all amounts due to Manager or Lender, including, without limitation: (i) to the amounts due under the Loan Agreement (including principal and interest); and (ii) to any other loans or advances Manager has made to the Tribe or the Enterprise Entity, including, without limitation: (a) repayment of the Self-Sufficiency Note, (b) repayment of the Exclusivity Waiver Note, (c) repayment of the Interim Promissory Note, (d) repayment of the Tribal Member Note, (e) advances made pursuant to Section 8.12 of this Agreement, (f) repayment of all Deficiency Payments Manager has made to the Tribe or the Enterprise Entity pursuant to Section 5.5 of this Agreement, and (g) reimbursement for any payment Manager or an Affiliate thereof pays to Lender pursuant to the terms of the Loan Agreement. The Tribe or the Enterprise Entity shall retain title to all Furniture and Equipment, Enterprise and Gaming Facility fixtures, improvements, supplies, equipment, funds and accounts, subject to the rights of Manager under the Security Agreement, to the rights of Manager to any accrued and unpaid Net Revenues due under Section 5 of this Agreement and the payment of all amounts due Manager pursuant to this Section. In the event of any termination

for cause, regardless of fault, the Parties shall retain all money previously paid to them pursuant to Section 5 of this Agreement, the Interim Promissory Note, the Self-Sufficiency Note, the Tribal Member Note and the Exclusivity Waiver Note. In any event, Manager shall have the right to its Management Fee accruing until the date of termination as provided in Section 5 of this Agreement

Notwithstanding the foregoing, Manager shall have the right to pursue any remedies available to Manager under the Development Agreement, the Loan Agreement, the Note, the Security Agreement, any Collateral Document or any contract, agreement, instrument or understanding provided for therein.

The Tribe shall indemnify and hold Manager and the Indemnified Parties harmless against all liabilities of any nature whatsoever relating to this Agreement, but only insofar as these liabilities result from acts within the control or scope of responsibility of Manager or its agents and were not created by the occurrence of an Event of Default caused by Manager (including any event that would constitute an Event of Default if not cured within any applicable cure period provided in this Agreement) or Manager's gross negligence, willful misconduct or fraud. The right of Manager or any Person to enforce any obligation of indemnification by the Tribe or to seek recovery for any claimed breach of such obligation of indemnification, including any claimed duty to defend, shall be limited to the assets specified in Section 16.1.7.1 of this Agreement.

Section 10.3. Events of Default by Manager. Each of the following shall be an Event of Default:

- (i) an act of fraud, embezzlement, theft or misrepresentation perpetrated by any director, officer or member of Manager in connection with the performance by Manager of its obligations under this Agreement;
- (ii) an act of fraud perpetrated by any employee, agent or representative (other than a director, officer or member) of Manager, or embezzlement or theft perpetrated by any employee, agent or representative of Manager in connection with the performance of Manager of its obligations under this Agreement, for which Manager shall not promptly: (a) make full restitution to the Enterprise to the extent such loss is not covered by insurance proceeds, (b) to the extent permitted under Applicable Law, terminate the employee(s), agent(s) and representative(s) perpetrating such fraud, embezzlement or theft and (c) institute appropriate procedures to prevent any further fraud, embezzlement or theft by similar means;
- (iii) the existence of a pattern of fraud, misrepresentation, embezzlement or theft resulting from the negligence of Manager in connection with the performance by Manager, or breach by Manager, of its obligations under this Agreement;
- (iv) the suspension or termination of the gaming license of any member, officer or director of Manager as a result of any criminal conviction if (i)

Manager has not immediately removed such person from all positions of responsibility and authority, (ii) Manager has not provided a qualified replacement within thirty (30) days of such suspension or termination, or (iii) such suspension or termination results in termination or suspension of Gaming in the Gaming Facility;

- (v) the suspension or termination, for cause, of Manager's gaming license by the TGC or any other authority with jurisdiction to do so, it being agreed by the Parties that any such determination shall not be subject to appeal (actions taken by the TGC in bad faith, or without substantial justification or which is clearly unreasonable, shall not constitute cause);
- (vi) subject to the terms and provisions of Section 13.5 hereof, Manager shall default in the due observance or performance of any of its obligations, representations, warranties or covenants hereunder and shall not have commenced and diligently pursued the cure of such default pursuant to Section 10.5 of this Agreement;
- (vii) Any material representation or warranty that Manager has made under this Agreement shall prove to have been untrue when made, or is later untrue without notice to the Tribe of the change in status and written acceptance by the Tribe of the changed status;
- (viii) Manager shall: (a) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property, (b) admit in writing its inability, or be generally unable, to pay its debts as they become due, (c) make a general assignment for the benefit of creditors, (d) commence a voluntary case under the federal bankruptcy laws (as now or hereafter in effect), (e) be adjudicated insolvent or be the subject of an order for relief under any chapter of the Bankruptcy Code (11 U.S.C. §101, et. seq.), (f) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, or (g) acquiesce to, or fail to controvert in a timely manner, any petition filed against it in an involuntary case under such bankruptcy laws.
- (ix) A case or other proceeding shall be commenced against, and without the application or consent of Manager in any court of competent jurisdiction, seeking the liquidation, reorganization, dissolution, winding up, or composition or readjustment of debts of Manager, the appointment of a trustee, receiver, custodian, liquidator or the like of Manager, or any similar action with respect to Manager under the federal bankruptcy laws (as now or hereafter in effect) or any other laws relating to bankruptcy, insolvency, reorganization, winding up or composition or adjustment of debts, and such case or proceeding shall continue undismissed, or unstayed and in effect, for a period of sixty days, or an order for relief

against Manager shall be entered in an involuntary case under such bankruptcy laws.

10.4 Tribe's Rights and Remedies. Upon the occurrence of an Event of Default caused by Manager, the Tribe shall provide Manager with written notice of the Event of Default, which notice shall, among other things, specifically advise Manager of the actions Manager must take, or refrain from taking, to cure such Event of Default, and Manager's right to cure such Event of Default pursuant to and in accordance with the terms and provisions of Section 10.5 of this Agreement.

Notwithstanding the generality of the foregoing, Section 10.5 of this Agreement shall not apply to any Event of Default specified in Section 10.3 (i) or (iii) of this Agreement, Manager expressly acknowledging that there shall be no right to cure any of the Events of Default set forth in these subsections.

If an Event of Default set forth in Section 10.3 (ii), or (iv) through (ix) remains uncured under the terms of Section 10.5 hereof, the Tribe may terminate this Agreement and shall have the right to pursue any remedies available to the Tribe under this Agreement, or at law or in equity as a result of the Event of Default. The Tribe shall not have the right to set off its damages and losses resulting from such Event of Default or Manager's failure to perform its indemnity obligations under the following paragraph, against any amounts owed to Manager, all payments and fees owed by the Tribe under this Agreement shall be deemed made pursuant to independent covenants.

Manager shall indemnify and hold the Tribe, the Enterprise Entity and the Indemnified Parties harmless against all liabilities of any nature whatsoever relating to the Enterprise, but only insofar as these liabilities result from acts of Manager's gross negligence, willful misconduct or fraud within the control or scope of responsibility of Manager or its agents or were created by the occurrence of the Event of Default caused by Manager.

Notwithstanding any term or provision of this Agreement to the contrary, no Event of Default by Manager shall relieve, excuse or in any way limit the Tribe's or the Enterprise Entity's obligation to repay, subject to any contractual limitations on sources of repayment, all amounts due to Manager or Lender, including, without limitation; (i) to the amounts due under the Loan Agreement (including principal and interest); and (ii) to any other loans or advances Manager has made to the Tribe or the Enterprise Entity, including, without limitation, (a) repayment of the Self-Sufficiency Note; (b) repayment of the Exclusivity Waiver Note, (c) repayment of the Interim Promissory Note; (d) repayment of the Tribal Member Note, (e) advances made pursuant to Section 8.12 of this Agreement; (f) repayment of all Deficiency Payments Manager has made to the Tribe or the Enterprise Entity pursuant to Section 5.5 of this Agreement; and (g) reimbursement for any payment Manager or an Affiliate thereof pays to Lender pursuant to the terms of the Loan Agreement. The Tribe or the Enterprise Entity shall retain title to all Furniture and Equipment, Enterprise and Gaming Facility fixtures, improvements, supplies, equipment, funds and accounts, subject to the rights of Manager under the Security Agreement, to the rights of Manager to any accrued and unpaid Management Fee due under Section 5 of this Agreement and the payment of all amounts due Manager pursuant to

this Section. In the event of any termination for cause, regardless of fault, the Parties shall retain all money previously paid to them pursuant to Section 5 of this Agreement; Manager shall have the right to its Management Fee accruing until the date of termination as provided in Section 5 of this Agreement.

Notwithstanding any term or provision of this Agreement to the contrary, the Tribe's termination of this Agreement for any reason set forth in Section 10.3 of this Agreement shall not terminate or in any way reduce, restrict or limit Manager's right to any accrued and unpaid Management Fee due Manager under Section 5 of this Agreement.

10.4.1. Manager's Rights upon Wrongful Termination. In the event that the Tribe terminates this Agreement pursuant to Section 10.4 of this Agreement and Manager, pursuant to Section 16 hereof, commences suit claiming such termination constitutes an Event of Default hereunder or a breach of this Agreement, and a Court of competent jurisdiction, as set forth in Section 16.1.7, enters judgment for Manager in such action, the Tribe agrees to pay Manager the Liquidated Damages, in cash, within ninety (90) days of the date of entry of a final, non-appealable judgment or order.

10.5 Right to Cure. Upon the occurrence of an Event of Default (except as set forth in Sections 10.3 (i), (iii) or (v), which shall not be curable) the Party claiming the Event of Default (the "Non-defaulting Party") shall provide the other Party (the "Defaulting Party") and the Enterprise with written notice of such Event of Default which shall, among other things, specifically advise the Defaulting Party and the Enterprise of the actions the Defaulting Party and/or the Enterprise, must take, or refrain from taking, to cure such Event of Default, and the Defaulting Party's right to cure such Event of Default pursuant to and in accordance with the terms and provisions of this Section 10.5. Unless expressly provided for elsewhere in Section 10 or in Section 13.5 hereof, the Defaulting Party (or the Enterprise, if appropriate) shall have forty-five (45) days from and after the date of the written notice to cure such Event of Default (the "Cure Period"), provided, however, the Cure Period shall be automatically extended for a reasonable time, in all cases except the Tribe's or the Enterprise Entity's failure to make payments due and payable to Manager pursuant to this Agreement as and when such payments are due and payable pursuant to the terms and provisions hereof, if the Defaulting Party commences to cure and is diligently proceeding to cure such Event of Default within the Cure Period but cannot reasonably cure such Event of Default within such period. An Event of Default shall be deemed to continue until such Event of Default is cured to the written satisfaction of the Non-defaulting Party, which written instrument shall not be unreasonably withheld.

During the period specified in the notice to terminate, a Party may pursue the dispute resolution provisions of this Agreement set forth at Section 16 hereof. The periods specified by this Section shall be tolled, rather than extended, during the pendency of any dispute resolution proceedings under this Section.

10.6. Voluntary Termination. This Agreement may be terminated upon the mutual written consent and approval of the Parties, subject to the terms of the Loan Agreement.

10.7. Involuntary Termination Due to Changes in Legal Requirements. It is the understanding and intention of the Parties that the operation of the Gaming Facility and the Enterprise shall conform to and comply with all Legal Requirements and Applicable Law. If during the term of this Agreement, the Gaming Facility or any material aspect of Gaming is determined by the Congress of the United States, the Department of the Interior of the United States of America, the NIGC or the final judgment of a court of competent jurisdiction to be unlawful under Applicable Law and the Parties are not able to reasonably resolve the issues giving rise to the determination that Gaming is unlawful, the obligations of the Parties hereto shall cease, and this Agreement shall be of no further force and effect; provided that:

- (i) Manager shall have the rights described at Section 10.8 and 3.4 of this Agreement;
- (ii) Manager and the Tribe and the Enterprise Entity shall retain all money previously paid to them pursuant to this Agreement;
- (iii) Any money loaned to the Tribe or the Enterprise Entity by or guaranteed by Manager or its Affiliates (to the extent Manager or its Affiliates have paid under such guarantee) or owed to Manager or its Affiliates pursuant to the Security Agreement shall be repaid to Manager or its Affiliates in accordance with the terms of the Agreement and subject to any limitations on source of repayment;
- (iv) Any undistributed Net Revenue shall be distributed pursuant to Section 5 of this Agreement;
- (v) The Tribe or the Enterprise Entity shall retain its interest in the title (and any lease) to all Furnishings and Equipment, subject to the rights of Manager under the Security Agreement and subject to the terms of applicable financing arrangements; and
- (vi) Notwithstanding any term or provision of this Agreement or the Loan Agreement to the contrary, upon Manager's termination of this Agreement pursuant to Section 10.8 of this Agreement, if the Tribe or the Enterprise Entity continues the operation of the Gaming Facility the Loan shall continue to be fully repayable pursuant to and in accordance with the terms and provisions thereof and subject to any limitations on source of repayment.

10.8 Manager's Right to Terminate Agreement. Manager may terminate this Agreement by written notice effective upon receipt if:

- (i) Any Governmental Authority whose approvals, consents, authorizations, permits, licenses, certifications of any nature pursuant to Applicable Law necessary for: (a) this Agreement, Loan Agreement or the Development Agreement to constitute valid, binding obligations of the Parties enforceable pursuant to the terms and provisions hereof or thereof, and (b) the design,

development, financing, construction, maintenance, management and operation of the Gaming Facility or the Enterprise in compliance with all Applicable Law has failed to grant such approval, consent, authorization, permit, license, or certification and it appears that the same cannot be obtained in any reasonable time.

- (ii) Manager reasonably determines, based upon advice of any Governmental Authority, or of Manager's counsel, that as a result of the continued existence of this Agreement (A) Manager or any Affiliate or member of Manager (including any entity or individual that controls, directly or indirectly, any member of the Manager) (i) could be denied any license, or approvals granted thereunder or otherwise available in any jurisdiction to Manager or its Affiliates or members of Manager (including any entity or individual that controls, directly or indirectly, any member of the Manager) or (ii) could lose any current license or approval then held by Manager or its Affiliates or member of Manager (including any entity or individual that controls, directly or indirectly, any member of the Manager) in any jurisdiction or (B) the overall regulatory framework in the State is materially adverse to any license or approvals held, or that may be obtained, by Manager or its Affiliates or members (including any entity or individual that controls, directly or indirectly, any member of the Manager) in any jurisdiction, and Manager is unable to effect a remedy or cure the situation acting in good faith and in a commercially reasonable manner. If and to the extent a remedy or cure under this Section 10.8(ii) is reasonably achievable by Manager (as reasonably determined by Manager), then Manager shall proceed to effect such cure.
- (iii) Manager reasonably believes that its performance of any directions, instruction or policies of the Tribe pursuant to this Agreement may reasonably be expected to result in the breach of any Legal Requirement or Applicable Law and the Tribe has unreasonably failed to agree upon waiver or modification of such performance within ten (10) days written notice by Manager.
- (iv) Manager reasonably determines that the continuation of Gaming is not practical because of fire, explosion, earthquake, storm, flood or other weather, unavailability of necessary utilities or raw materials, strike, lockout, unavailability of any component, activities of a combination of workers or other labor difficulties, war, insurrection, riot, act of God or public enemy.

10.9 Manager's Compensation Upon Termination. Upon Manager's termination of this Agreement pursuant to Section 10.8 (ii) or (iii) of this Agreement, and provided that the circumstance giving rise to such termination were not caused in whole or in material part by any Event of Default on the part of Manager, the Tribe shall, within thirty (30) days after Manager's termination of this Agreement, pay Manager the Liquidated Damages, in cash within ninety (90) days of the determination of the amount to be paid.

Notwithstanding any term or provision hereof or of the Loan Agreement or the Development Agreement to the contrary, neither payment pursuant to this Section, nor Manager's ceasing performance of its obligations hereunder are intended or shall be interpreted to relieve, excuse or in any way limit the Tribe's or the Enterprise Entity's obligation to repay, subject to any contractual limitations on sources of repayment, all amounts due to Manager or Lender, including, without limitation: (i) to the amounts due under the Loan Agreement (including principal and interest); and (ii) to any other loans or advances Manager has made to the Tribe or the Enterprise Entity, including, without limitation, (a) repayment of the Self-Sufficiency Note, (b) repayment of the Exclusivity Waiver Note, (c) repayment of the Interim Promissory Note, (d) repayment of the Tribal Member Note, (e) advances made pursuant to Section 8.12 of this Agreement, (f) repayment of all Deficiency Payments Manager has made to the Tribe or the Enterprise Entity pursuant to Section 5.5 of this Agreement, and (g) reimbursement for any payment Manager or an Affiliate thereof pays to Lender pursuant to the terms of the Loan Agreement. The Tribe or the Enterprise Entity shall retain title to all Furniture and Equipment, Enterprise and Gaming Facility fixtures, improvements, supplies, equipment, funds and accounts, subject to the rights of Manager under the Security Agreement, to the rights of Manager to any accrued and unpaid Net Revenues due under Section 5 of this Agreement and the payment of all amounts due Manager pursuant to this Section. In the event of any termination for cause, regardless of fault, the Parties shall retain all money previously paid to them pursuant to Section 5 of this Agreement; and the Interim Promissory Note, and, Manager shall have the right to its Management Fee accruing until the date of termination as provided in Section 5 of this Agreement.

10.10 Waiver of Special Damages. Any claim by a Party for damages or an award under Section 16 may not include, and the Parties hereto specifically waive, any right to a claim or an award of special, incidental, exemplary, punitive or consequential damages (including losses or liabilities related to lost profits, prospective profits, or loss of good will) against the other.

SECTION 11 **CONCLUSION OF THE MANAGEMENT TERM**

11.1 Conclusion of the Management Term. Upon the conclusion or the termination of this Agreement pursuant to Sections 10.6 or 10.8, Manager shall have the following rights and obligations:

11.2 Transition. Manager shall take reasonable steps for the orderly transition of management of the Enterprise to the Tribe or its designee pursuant to a transition plan as described in Section 17 of this Agreement; such transition period shall be for a reasonable period, but not less than ninety (90) days, provided, however, that if the termination is a result of a termination of Manager's gaming license, Manager shall have no power or authority with respect to the Management of the Enterprise and all such power and authority shall revert to the Tribe during such transition period.

11.3 Undistributed Net Revenues. If the Enterprise has accrued Net Revenues which have not been distributed under Section 5 of this Agreement, Manager shall receive that Management Fee equal to that Management Fee it would have received had the distribution occurred during the Term.

SECTION 12 **CONSENTS AND APPROVALS**

12.1 Tribe. Where approval or consent or other action of the Tribe is required, unless otherwise required by Tribal Law, such approval shall mean the written approval of the Tribal Council evidenced by a resolution thereof, certified by a Tribal official as having been duly adopted, or such other person or entity designated by resolution of the Tribal Council. Any such approval, consent or other action shall not be unreasonably withheld, conditioned or delayed.

12.2 Intentionally Omitted.

12.3 Manager. Where approval or consent or other action of Manager is required, such approval, consent or other action shall not be unreasonably withheld, conditioned or delayed.

SECTION 13 **DISCLOSURES**

13.1 Members, Shareholders and Directors. Manager warrants that on the date of this Agreement its members, shareholders, directors and officers are those listed on Exhibit B.

13.2 Warranties. Manager further warrants and represent as follows:

- (i) no person or entity has any direct or indirect beneficial ownership or profits interest in Manager other than as set forth herein;
- (ii) no officer, director or owner of five percent or more of the stock or membership interest of Manager has been convicted of, or pleaded *nolo contendere* to any felony or any gaming offense, or had any association with individuals or entities known to be connected with organized crime. Additionally, no above referenced officer, director or owner has been arrested or indicted for any felony or gaming offense whereby said arrest or indictment, without conviction, specifically causes a gaming license to be revoked or denied in any jurisdiction; and
- (iii) no person or entity listed on Exhibit B to this Agreement, including any officers and directors of Manager, has been convicted of, or pleaded *nolo contendere* to any felony or gaming offense, or had any association with individuals or entities known to be connected with organized crime. Additionally, no above referenced officer, director or owner has been

arrested or indicted for any felony or gaming offense whereby said arrest or indictment, without conviction, specifically causes a gaming license to be revoked or denied in any jurisdiction.

13.3 Criminal and Credit Investigation. Manager agrees that all of its members, shareholders, directors and officers and any other person required to do so by Applicable Law (whether or not involved in the Enterprise), shall:

- (i) consent to background investigations to be conducted by the Tribe, the State, the Federal Bureau of Investigation or any other law enforcement authority to the extent required under Applicable Law;
- (ii) be subject to licensing requirements in accordance with Applicable Law and this Agreement;
- (iii) consent to a background, criminal and credit investigation to be conducted by or for the NIGC, if required;
- (iv) consent to a financial and credit investigation to be conducted by a credit reporting or investigation agency at the request of the TGC or its representatives; and
- (v) disclose any information requested by the TGC or its representatives which would facilitate the background and financial investigation.

Any materially false or deceptive disclosures or failure to cooperate fully with such investigations by an employee of Manager or any employee of the Tribe shall result in the immediate dismissal of such employee, and shall not constitute an Event of Default hereunder. The results of any such investigation may be disclosed by the TGC to any Governmental Authority pursuant to Applicable Law.

13.4 Disclosure Amendments. Manager agrees that whenever there is any change proposed in the information disclosed pursuant to this Section 13 it shall notify the NIGC, the Tribe and the TGC of such change within ten (10) days of any such proposed change. In the event there is any change in information disclosed pursuant to Section 13.1., Manager agrees that it will notify the Tribe, the TGC and the NIGC not later than thirty (30) days following the change or within ten (10) days after it becomes aware of such change, whichever is later. No addition to the list of persons listed in Section 13.1 of this Agreement, or to the persons having management responsibility for the Enterprise pursuant to this Agreement, shall be effective until the Parties are notified that the Chairman -- NIGC has approved the change pursuant to the provisions of 25 C.F.R. Part 535. All of the warranties and agreements contained in this Section 13 shall apply to any person or entity that would be listed in this Section 13 as a result of such changes. In addition, if any change in the information disclosed pursuant to this Section 13 would constitute or evidence any change in ownership interest in Manager or in this Agreement, no such change shall be made without the prior written consent of the Tribe, which consent shall not be unreasonably withheld, conditioned or delayed

13.5 Severance of Management Personnel. Notwithstanding any other term or provision of this Agreement to the contrary, if: (i) a breach of the warranty contained in clause (ii) of Section 13.2 is discovered, and such breach was not disclosed by any background check conducted as part of the Federal approval of this Agreement, or was discovered by the investigation but all officers and directors of Manager sign sworn affidavits that they had no knowledge of such breach, then Manager, notwithstanding the Cure Period provided in Section 10.5 hereof, shall have thirty (30) days after notice from the Tribe to terminate the interest of the offending person or entity and, if such termination takes place, this Agreement shall remain in full force and effect; and (ii) if a breach relates to a failure to updated changes in financial position or additional gaming related activities, then Manager, not withstanding the Cure Period provided in Section 10.5 hereof, shall have thirty (30) days after notice from the Tribe to cure such default prior to termination. If and to the extent a cure of a breach under this Section 13.5 is reasonably achievable by Manager (as reasonably determined by Manager), then Manager shall proceed to effect such cure. A termination of this Agreement by the Tribe solely due to a breach of the warranty contained in clause (ii) of Section 13.2 shall not constitute an Event of Default by Manager, and the Tribe's sole remedy shall be to terminate this Agreement.

13.6 Foreign Corrupt Practices Act. Neither the Tribe nor any Person for or on behalf of the Tribe, shall make, and the Tribe acknowledges that Manager will not make, any expenditure for any unlawful purposes in the performance of its obligations under this Agreement and in connection with its activities in relation thereto. Neither the Tribe nor any Person for or on behalf of the Tribe, shall, and the Tribe acknowledges that Manager will not, make any offer, payment or promise to pay, authorize the payment of any money, or offer, promise or authorize the giving or anything of value, to (a) any government official, any political party or official thereof, or any candidate for political office or (b) any other Person while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any such official, to any such political party or official thereof, or to any candidate for political office for the purpose of (i) influencing any action or decision of such official party or official thereof, or candidate in his or its capacity, including a decision to fail to perform his or its official functions or (ii) inducing such official party or official thereof, or candidate to use his or its influence with any Governmental Authority to effect or influence any act or decision of such Governmental Authority. The Tribe represents and warrants to Manager that, except as expressly disclosed in this Agreement, no government official nor any candidate for political office has any direct or indirect ownership or investment interest in the revenues or profit of the Tribe or the Gaming Facility.

Neither the Manager nor any Person for or on behalf of the Manager, shall make, and the Manager acknowledges that the Tribe will not make, any expenditure for any unlawful purposes in the performance of its obligations under this Agreement and in connection with its activities in relation thereto. Neither the Manager nor any Person for or on behalf of the Manager, shall, and the Manager acknowledges that the Tribe will not, make any offer, payment or promise to pay, authorize the payment of any money, or offer, promise or authorize the giving or anything of value, to (a) any government official, any political party or official thereof, or any candidate for political office or (b) any other Person while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given, or promised, directly or

indirectly, to any such official, to any such political party or official thereof, or to any candidate for political office for the purpose of (i) influencing any action or decision of such official party or official thereof, or candidate in his or its capacity, including a decision to fail to perform his or its official functions or (ii) inducing such official party or official thereof, or candidate to use his or its influence with any Governmental Authority to effect or influence any act or decision of such Governmental Authority. The Manager represents and warrants to the Tribe that, except as expressly disclosed in this Agreement, no government official nor any candidate for political office has any direct or indirect ownership or investment interest in the revenues or profit of the Manager or the Gaming Facility.

SECTION 14 **RECORDATION**

14. **Recordation.** At the option of Manager or the Tribe, any security agreement related to the Loan Agreement may be recorded in any public records. Where such recordation is desired in any relevant recording office maintained by the Tribe, and/or in the public records of the BIA, the Tribe will accomplish such recordation upon the request of Manager. Manager shall promptly reimburse the Tribe for all expenses, including attorney fees, incurred as a result of such request. No such recordation shall waive the Tribe's or the Enterprise Entity's sovereign immunity.

SECTION 15 **LIEN, LEASE OR JOINT VENTURE**

15. **No present Lien, Lease or Joint Venture.** The Parties agree and expressly warrant that neither this Agreement nor any Exhibit thereto is a mortgage or lease and, consequently, does not convey any present interest whatsoever in the Gaming Facility or the Property, nor any proprietary interest in the Enterprise itself. The Parties further agree and acknowledge that it is their intent, and that this Agreement shall not be construed, to create a joint venture between the Tribe and/or the Enterprise Entity and/or Manager; rather, Manager shall be deemed to be an independent contractor for all purposes hereunder.

SECTION 16 **DISPUTE RESOLUTION**

16.1 **Retention of Sovereign Immunity.** Except as provided for in this Section 16.1, the Tribe, by entering into this Agreement and performing the obligations the Tribe has assumed and agreed to perform hereunder and thereunder, does not waive, limit or modify its sovereign immunity from unconsented suit or judicial litigation. Manager acknowledges that such sovereign immunity is enjoyed by the Tribe, the Enterprise Entity and the Enterprise, which constitutes a business activity of the Tribe.

16.1.1 Scope of Waiver. Subject to the provisions of Section 16.1, the Tribe hereby expressly and irrevocably waives its rights to have any dispute, controversy, suit, action or proceeding arising under this Agreement, the Interim Promissory Note, the Self-Sufficiency Note, the Exclusivity Waiver Note, the Tribal Member Note, the Loan Agreement or the Development Agreement, heard in any Tribal forum whether or not such forum now exists or is hereafter created including, without limitation, any Tribal court or other tribunal, forum, council or adjudicative body of the Tribe (each, a "Tribal Forum"), and expressly waives its sovereign immunity from unconsented suit and consents to suit or other legal proceedings in accordance with and pursuant to the terms and provisions of Section 16.1, and only to such extent. Notwithstanding any term or provision of this Agreement, the Loan Agreement or the Development Agreement to the contrary, for purposes of this Section 16.1, the Tribe's waiver of its sovereign immunity from unconsented suit or other legal proceedings pursuant to and in accordance with the terms and provisions hereof shall be deemed an express and explicit waiver of its sovereign immunity from unconsented suit or other legal proceedings pursuant to and in accordance with the terms and provisions hereof, shall be deemed an express and explicit waiver to the same limited extent of sovereign immunity of the Enterprise, and both the Tribe and the Enterprise Entity shall, upon request from Manager, execute and deliver such documentation as Manager shall reasonably request for the purposes of verifying the effectiveness of the limited waivers of sovereign immunity pursuant to the terms and provisions hereof, including, but not limited to an opinion of counsel reasonably acceptable to Manager, which opinion shall address the validity of this Agreement in its entirety.

16.1.2 Procedural Requirements. The Tribe's or the Enterprise Entity's waiver of its sovereign immunity as to unconsented suit or other legal proceedings is effective if, and only if, each and every one of the following conditions is met:

(i). The claim is made by a Party designated under Section 16.1.4 hereof, and not by any other Person, corporation, partnership or entity, whatsoever;

(ii). The claim alleges a breach or an Event of Default by the Tribe of one or more specific obligations or duties the Tribe assumed pursuant to the terms and provisions of this Agreement; and

(iii). The claim, with the exception of any claim arising under Section 16.1.8, 16.2 or 16.3 seeks money damages for an Event of Default by the Tribe hereunder, provided, however, that the property, assets or funds specifically pledged and assigned to satisfy any judgment Manager secures against the Tribe or the Enterprise Entity or the Enterprise under this Agreement shall be limited to the Net Revenue and the Furniture and Equipment.

16.1.3: Time Period. The waiver granted herein shall commence on the Effective Date and shall continue for the longer one (1) year following the termination of this Agreement pursuant to and in accordance with the terms and provisions hereof, or

two (2) years after the claim accrues or is discovered or should have been discovered upon the exercise of due diligence, except that the waiver shall remain effective for any proceedings then pending, and all appeals therefrom.

16.1.4: Recipient of Waiver. The recipients of the benefit of this waiver of sovereign immunity are limited to Manager, its successors and assigns, and any and all Persons expressly covered by the indemnification provisions hereof; and as to such latter persons, this waiver extends only to the enforcement of any rights to indemnification by the Tribe, and to no other actions or persons. The right of any such Person to enforce any obligation of indemnification by the Tribe or to seek recovery for any claimed breach of such obligation of indemnification, including any claimed duty to defend, shall be limited to the assets specified in Section 16.1.7.1 of this Agreement.

16.1.5: Governing Law. The Parties agree that any dispute arising out of or in connection with this Agreement shall be resolved first pursuant to applicable federal law; second, pursuant to applicable State law; and third, pursuant to the applicable laws of the Tribe if no State or federal law applies.

16.1.6: Service of Process. In any proceeding brought pursuant to this Agreement, the Tribe consents to service made in accordance with the notice provisions of this Agreement or pursuant to the Federal Rules of Civil Procedure.

16.1.7: Enforcement. The Tribe expressly waives sovereign immunity from a judgment or order consistent with the terms and provisions of this Section 16.1.7 which is final because either the time for appeal thereof has expired or the judgment or an order is issued by a court having final appellate jurisdiction over the matter. The Tribe waives its sovereign immunity in, and consents, for itself and for the Enterprise Entity and the Enterprise, to the jurisdiction of, and to be sued in and to accept and to be bound by any order or judgment of the United States District Court for the Northern District of California, and any federal court having appellate jurisdiction thereover, consistent with the terms and provisions of this Section. Notwithstanding any term or provision of the this Agreement to the contrary, in the event that the United States District Court for the Northern District of California declines to exercise jurisdiction over any case or action arising under or in connection with this Agreement the Tribe expressly consents, for itself and for the Enterprise Entity and the Enterprise, to the jurisdiction of, and to be sued in and to accept and to be bound by any order or judgment of Courts of the State with jurisdiction over Contra Costa County, California, and any Court with appellate jurisdiction thereover, and all of the limitations, terms and provisions of Section 16.1 shall apply with full force and effect to actions in such State Courts. Manager also consents voluntarily to the jurisdiction of any and all of the foregoing named Courts. If, and only if, a dispute arises between the Parties over a matter for which the Tribe has provided a limited waiver of immunity under this Agreement (the "Dispute"), and no applicable State or federal court has jurisdiction to hear the Dispute, then either Party may request binding arbitration of the Dispute in accordance with the procedures set forth in Section 16.1.9 herein, and the Tribe hereby expressly, unequivocally and irrevocably

waives its sovereign immunity with respect thereto to the limited extent set forth in this Section 16.1

16.1.7.1: Assets Pledged to Satisfy Enforcement Proceedings. The only assets of the Tribe or the Enterprise Entity or the Enterprise which shall be available, and which are thus specifically pledged and assigned hereby, to satisfy any enforcement proceedings or judgment in connection with this Agreement shall be limited to the Net Revenue, the Exclusivity Waiver Note, and the Furnishings and Equipment.

16.1.7.2: Limitation Upon Enforcement. Damages awarded against the Tribe or the Enterprise Entity or the Enterprise, including, without limitation, any claim to recover costs, expenses or attorneys' fees hereunder, shall be satisfied solely from assets specified in Section 16.1.7.1 hereof, and shall not constitute a lien upon or be collectible from any other income or assets of the Tribe, except with the written consent of the Tribe.

16.1.8: Guaranty of Tribe. The Tribe agrees that it will not revoke or limit, in whole or in part, the Tribe's limited waiver of sovereign immunity contained in this Section. In the event of any such revocation or attempted revocation, the Parties expressly recognize and agree that there remains no adequate remedy at law available to Manager, and Tribe hereby consents to and will not oppose the entry of appropriate injunctive relief, consistent with the limitations, terms and conditions of this Agreement, against the Tribe, and/or any other instrumentality of the Tribe, including, without limitation, the Enterprise Entity, which may be necessary to give effect to the waiver of tribal sovereign immunity contained in Section 16.1 of this Agreement. In the event of any attempted limitation or revocation of the limited waiver of sovereign immunity granted herein, Manager may immediately seek judicial injunctive relief as provided in this Section without first complying with any of the prerequisites contained in this Section to the limited waiver of sovereign immunity granted herein. Any action seeking injunctive relief under this Section 16.1.8 shall be brought in the Courts consistent with Section 16.1.7, and the Tribe, for itself and for the Enterprise Entity and the Enterprise, expressly consents to the jurisdiction of, and agrees to be bound by any order or judgment of such Court, and any Court with appellate jurisdiction thereover.

16.1.9: Arbitration. (a) To initiate binding arbitration of a Dispute, a Party shall notify the other Party in writing. The Dispute shall be settled by binding arbitration by a single neutral arbitrator in accordance with the applicable rules of the Judicial Arbitration and Mediation Services ("Rules"), and subject to those provisions of the California Code Of Civil Procedure, Part 3, Title 9 that are consistent with such Rules. Judgment on the award rendered by the arbitrator may be entered in any court pursuant to the California Code Of Civil Procedure, Part 3, Title 9. The arbitrator shall preside and shall be selected in the manner provided for by the Rules.

(b) Any Party, before or during any arbitration, may, to the extent relief is unavailable in accordance with the JAMS Streamlined Arbitration Rules and Procedures, apply to a court having jurisdiction 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) None of the Parties 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 Parties, which consent shall not be unreasonably withheld;

(ii) as required by Applicable Law, the requirement of any lenders, 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; and

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

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

(e) The arbitration shall take place at a location in San Francisco, California. The Parties and the arbitrators shall maintain strict confidentiality with respect to the arbitration. The arbitrator shall render an award within forty-five (45) days from the conclusion of the arbitration.

(f) The Parties to this Agreement specifically agree that (i) Manager shall seek enforcement of any arbitration award in favor of Manager and against the Tribe only from the assets specified in Section 16.1.7.1 of this Agreement, (ii) the Parties intend that the arbitrator shall have no power to render any decision or make any award which is inconsistent with the limitations, terms or provisions of Section 16.1., and (iii) the Parties may challenge the award of the arbitrator in accordance with the Rules or on the basis that the arbitrator rendered a decision or made an award that is inconsistent with the limitations, terms or provisions of this Section 16.1, but not on the basis that the Tribe did not waive its sovereign immunity to have the Dispute heard by the arbitrator in the first instance. 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 pursuant to this Section refuse to abide by the decision of the arbitrator, the prevailing Party may apply to any applicable State or federal 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. The entry of judgment on, and enforcement of, such award by such courts shall be subject to the terms of this Section 16.1.

16.2 Mediation. Except as otherwise expressly provided for in this Agreement, any Deadlock shall be submitted to mediation pursuant to this Section. Notwithstanding the foregoing, Tribal Council actions, Gaming Commission actions, Tribal Gaming Ordinance issues, Tribal approval of Capital Budgets, and Tribal issuance of licenses are matters that may not be mediated. The Tribe shall retain governmental control over these matters.

16.2.1 Creation of Mediation Board. No later than ninety (90) days prior to the anticipated Commencement Date the Parties shall establish a Mediation Board consisting of three (3) members; one (1) member selected by the Tribe, one (1) member selected by Manager, and one (1) member selected by the other two (2) designees. No member of the Mediation Board shall be a member or employee of the Tribe, nor an officer, director or partner of Manager, nor shall any member of the Mediation Board have any previously existing business relationship with either Party or any Affiliate thereof, and the Parties warrant and represent to each other that for a period of three (3) years following any Members service of the Mediation Board, neither Party shall enter into any contractual relationship, directly or indirectly with such Member of the Mediation Board.

16.2.2 Compensation of Mediation Board. Upon the creation of the Mediation Board, the Parties shall establish the rules, regulations and Compensation governing the operation of the Mediation Board, provided, however, that the compensation for Members of the mediation Board shall be on a per diem basis solely.

16.2.3 Authority of Mediation Board. The Parties expressly acknowledge and agree that the Mediation Board is established and maintained solely for the purpose of expediting resolution of operational issues which may arise between the Parties from time to time during the term of this Agreement. Notwithstanding any term or provision hereof to the contrary, nothing contained herein is intended or shall be construed as requiring mediation of any act or omission which may constitute an Event of Default hereunder, and the Parties expressly and explicitly warrant and represent to each other that nothing contained in this section 16.2 is intended or shall in any way be interpreted as amending, altering, modifying, changing, limiting or imposing any additional procedural requirements on the limited waiver of sovereign immunity the Tribe has granted for itself and for the Enterprise Entity and the Enterprise pursuant to Section 16.1 of this Agreement. The Mediation Board's sole and exclusive authority and purpose is to resolve operational difference between the Parties hereunder, and nothing contained herein is intended or shall diminish the express authority of Manager with respect to the responsibility for the operation, management and maintenance of the Gaming Facility and the Enterprise on a daily basis.

16.2.4 Procedures for Mediation. Either Party may refer a Deadlock to the Mediation Board. Upon such referral, the Mediation Board shall schedule a meeting within forty-eight (48) hours to take place within the Gaming Facility. The meeting shall last no longer than the close of business on the second day of the meeting, and after the close of the meeting, the Mediation Board shall make its recommendation, which shall be advisory only.

16.3 Accounting/ Fee Disagreements. Any disagreement regarding the calculation of Management Fees or any other fees paid or payable by the Tribe, the Enterprise Entity or the

Enterprise shall be resolved in the following manner: Manager and the Tribe shall use their reasonable efforts with the assistance of their respective independent public accountants to resolve such disagreement. If such persons are unable to resolve the disagreement within thirty (30) calendar days after receipt by either Party of a notice identifying the nature of such disagreement (the "Notice of Disagreement"), then the issues raised by the Notice of Disagreement shall be resolved by any nationally recognized firm of certified public accountants mutually acceptable to Manager and the Tribe (the "Accounting Referee"). Such person shall act as an expert and not as an arbitrator. If within forty five (45) days after receipt by either Party of the Notice of Disagreement, the Parties are unable to agree on an Accounting Referee, then each Party shall pick an internationally recognized firm of certified public accountants and such firms shall select the Accounting Referee. The Parties shall use reasonable efforts to cause the Accounting Referee to promptly resolve such issues. Such determination shall be made within thirty (30) calendar days after the date on which the Accounting Referee receives notice of the disagreement, or as soon thereafter as possible. Such determination shall be final and binding upon the Parties and shall not be subject to appeal. The fees, costs and expenses of the Accounting Referee in conducting such review (if any) shall be shared 50.0% by Manager and 50.0% by the Tribe. If the final resolution of fees as provided above results in an additional payment to Manager by the Tribe, then the Tribe shall pay to Manager, subject to the terms and conditions of this Agreement with respect to payments by the Tribe to Manager, any additional amounts due to Manager, together with Interest thereon, pursuant to Section 8.11, from the relevant due date, and reimburse Manager for its share of the fees, costs and expenses of the Accounting Referee, within fifteen (15) days of the date on which the final determination is agreed or determined. If the final resolution of fees as provided above results in an overpayment to Manager by the Tribe, then Manager shall reduce the Management Fees then due and payable by the Tribe under Section 5 until such overpayment has been credited to the Tribe, together with Interest thereon, pursuant to Section 8.11, from the relevant due date, and reimburse the Tribe for its share of the fees, costs and expenses of the Accounting Referee, within fifteen (15) days of the date on which the final determination is agreed or determined.

SECTION 17 **NEGOTIATE NEW AGREEMENT**

17. Intent to Negotiate New Agreement. On or before thirty (30) days after the end of the fourth year of this Agreement, the Tribe shall give Manager notice of its intent regarding its willingness in its sole discretion to enter into negotiations for a new Management Agreement to be effective at such time as may be agreed upon by the Tribe and Manager and is permissible under Applicable Law. Any new Management Agreement shall be effective only upon approval by the NIGC.

17.1 Transition Plan. If the Tribe and Manager are unable to agree to the terms of a new agreement or if the Tribe decides not to enter into negotiations for a new agreement, then the Tribe and Manager shall agree upon a transition plan within thirty (30) days notice from the Tribe of its intention not to negotiate a new Management Agreement, which plan shall be sufficient to allow the Tribe to operate the Enterprise as of the end of the Term, and provide for the orderly transition of the management of the Enterprise as of the end of the Term.

SECTION 18
ENTIRE AGREEMENT

18. **Entire Agreement.** This Agreement, including the Exhibits referred to herein, constitute the entire understanding and agreement of the Parties hereto related to the management of the Gaming Facility and Gaming. The Development Agreement constitutes the entire understanding and agreement of the Parties hereto related to the development of the Gaming Facility. These two agreements supersede all other prior agreements and understandings, written or oral, between the Parties with respect to their respective subject matter.

SECTION 19
GOVERNMENT SAVINGS CLAUSE

19. **Government Savings Clause.** Each of the Parties agrees to execute, deliver and, if necessary, record any and all additional instruments, certifications, amendments, modifications and other documents as may be required by the United States Department of the Interior, BIA, the NIGC, the Office of the Solicitor, or any applicable statute, rule or regulation in order to effectuate, complete, perfect, continue or preserve the respective rights, obligations, liens and interest of the Parties hereto to the fullest extent permitted by Applicable Law; provided, that any such additional instrument, certification, amendment, modification or other document shall not materially change the respective rights, remedies or obligations of the Tribe or Manager under this Agreement or any other agreement or document related hereto.

SECTION 20
PREPARATION OF AGREEMENT

20. **Preparation of Agreement.** This Agreement was drafted and entered into after careful review and upon the advice of competent counsel on behalf of each of the Parties; it shall not be construed more strongly for or against either Party. More particularly, the Parties agree that the canon of construction which provides that ambiguous provisions shall be construed in favor of an Indian tribe shall not be applicable with respect to the interpretation of this Agreement.

SECTION 21
STANDARD

21. **Standard of Reasonableness.** Unless specifically provided otherwise, all provisions of this Agreement and all collateral agreements shall be governed by a standard of reasonableness and good faith.

SECTION 22
EXECUTION

22. **Execution.** This Agreement may be executed in counterparts; each of which is equally valid.

SECTION 23
ATTORNEYS' FEES

23. **Attorneys' Fees.** If a dispute resolution proceeding is filed under this Agreement based in contract, tort or equity, or this Agreement gives rise to any other legal proceeding between any of the Parties hereto, the prevailing Party shall be entitled to recover from the losing Party reasonable attorneys' fees, costs and expenses, including, but not limited to, expert witness fees, accounting and engineering fees, and any other professional fees incurred in connection with the prosecution or defense of such action. For purposes of this Agreement, the terms, "attorneys' fees," "costs" and "expenses" shall also include the fees and expenses incurred by counsel to the Parties hereto for photocopies, duplications, deliveries, postage, telephone and facsimile communications, and transcripts of proceedings relating to the action, and all fees billed for law clerks, paralegals, librarians, secretaries and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees," "costs" and "expenses" shall also include, without limitation, fees and costs incurred in the following proceedings: (i) arbitrations or mediations; (ii) bankruptcy proceedings; (iii) appeals; (iv) post-judgment motions and collections actions; and (v) garnishment, levy and debtor examinations. The prevailing Party shall also be entitled to attorneys' fees and costs after any dismissal of an action. The Parties expressly agree that this provision shall survive the termination, for any reason, or expiration of this Agreement.

SECTION 24
PERFORMANCE DELAYED

24. **Performance Delayed.** Neither the Tribe nor the Enterprise Entity nor Manager will be liable for any failure or delay in the performance of its obligations hereunder which are due, in whole or in part, directly or indirectly, to any cause beyond the reasonable control of such Party, which in the exercise of due diligence could not have been avoided, including without limitation, fire, explosion, earthquake, storm, flood or other weather, unavailability of necessary utilities or raw materials, strike, lockout, unavailability of any component, activities of a combination of workers or other labor difficulties, war, insurrection, riot, act of God or public enemy, law, act, order, export control regulation, proclamation decree, regulations, ordinance, or instruction of government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of any breach by such Party of this Agreement). In the event of such occurrence, the Party so affected will give prompt notice to the other Party, stating the period of time the occurrence is expected to continue. Whenever any provision of this Agreement provides that a stated (or ascertainable) date or time period shall be subject to or extended due to events under this Section 24, then, such date or time period shall

only be extended by the number of days, if any, that the affected Party using reasonably commercial efforts would be delayed by reason of such event in performing the action in question. Payment of the Management Fee is not subject to the applicability of this Section.

SECTION 25
CAP ON CONSTRUCTION AND DEVELOPMENT COSTS

25. **Cap on Construction and Development Costs.** Notwithstanding anything to the contrary contained in this Agreement, the Loan Agreement or the Development Agreement, in no event shall the aggregate Construction and Development Costs which the Tribe or the Enterprise Entity or the Enterprise is required to pay or reimburse to any person in any manner exceed [] DOLLARS [] and if it is reasonably determined by the Parties that the construction and development costs may exceed the cap, then the Parties may agree to increase the cap, or either Party may terminate this Agreement, but such termination shall not be deemed to be due to an Event of Default by either Party.

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SECTION 26
LIMITED RECOURSE OBLIGATIONS

26. **Limited Recourse Obligations; No General Obligation.** Neither the general obligation, nor the full faith and credit or the taxing power of the Tribe is pledged to the payment of any amounts due hereunder or under any other agreement related hereto. Notwithstanding any other provisions herein, or in any agreement related hereto, the obligations of the Tribe or the Enterprise Entity to pay amounts due hereunder or on any loan acquired in connection with the Project, as well as any other claims, liabilities or obligations of the Tribe or the Enterprise Entity related hereto or thereto of any type or nature, are and shall be limited recourse obligations of the Tribe or the Enterprise Entity enforceable solely against the items identified at Section 16.1.7.1 above, including, without limitation, revenues generated by the Gaming Facility and the personal property acquired pursuant to this or the other Agreements. In no event shall Manager or any Lender arranged by Manager have recourse on any claim related hereto as against: (i) the real property belonging to the Tribe or held in trust for the Tribe; (ii) the physical property of the Gaming Facility (other than the personal property and revenues constituting collateral); (iii) any distributions or payments to the Tribe or any Affiliate of the Tribe made in accordance with the terms of this Agreement or any loan Documents; (iv) assets of the Tribe purchased or acquired with such distributions; or (v) any property of the Tribe other than the pledged personal property acquired for use in the Gaming Facility and revenues derived therefrom.

SECTION 27
CLASS III GAMING

27. **Class III Gaming.** The Parties have entered into this Agreement to permit Class II Gaming to occur at the Gaming Facility at the earliest possible opportunity, but with the intent that Class III Gaming shall occur at the Gaming Facility as soon as all Governmental Authorities


having jurisdiction over Class III Gaming on the Property consent to or grant permission for Class III Gaming at the Gaming Facility under Applicable Law (the "Class III Gaming Consent"). Upon receipt of the Class III Gaming Consent, Manager shall review the Compact and deliver to the Tribe a notice of Class III Gaming eligibility (the "Class III Gaming Notice") when Manager has reasonably satisfied itself as to the terms and conditions of the Compact, and for purposes of Class III Gaming, the Compact has been approved by the Secretary, or has been deemed approved, and published in the Federal Register as provided in 25 U.S.C. §2710(d)(8)(D). Commencing on the Execution Date and continuing until delivery of the Class III Gaming Notice, each Party to this Agreement waives the other Party's obligation to comply with or adherence to any terms, conditions or provisions of this Agreement applicable to Class III Gaming. Upon the delivery of the Class III Gaming Notice, this Agreement shall be deemed to apply to Class III Gaming as if the waiver set forth above had never been in effect. The Parties expressly acknowledge and agree that the applicability of this Agreement to Class III Gaming upon delivery of the Class III Gaming Notice shall be automatic and self activating without the need for any Party to execute any other or further documentation of any kind.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

THE SCOTTS VALLEY BAND OF POMO INDIANS,
a federally recognized Indian tribe

By: _____
Donald Arnold
Its: Chairman of the Tribal Council

SEMINOLE SV ENTERTAINMENT, LLC,
a Florida limited liability company

By:  _____
Seminole California Management, LLC
its Manager

By: _____
Name: Jim Shore
Title: Manager

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

THE SCOTTS VALLEY BAND OF POMO INDIANS,
a federally recognized Indian tribe

By: Donald Arnold
Donald Arnold
Its: Chairman of the Tribal Council

SEMINOLE SV ENTERTAINMENT, LLC,
a Florida limited liability company

By: Seminole California Management, LLC
its Manager

By: _____
Name: Jim Shore
Title: Manager

EXHIBIT LIST

- A.** Legal Description of Property.
- B.** List of Manager's Members, Shareholders and Directors
- C.** The Enterprise Investment Policy
- D.** Form of Irrevocable Banking Instructions
- E.** Amounts of Insurance Coverage

EXHIBIT A

Legal Description of Property

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Exhibit C

The land referred to in this policy is described as follows:

Real property in the City of Richmond in the County of Contra Costa, State of California, described as follows:

Exhibit C-1

That parcel of land described in the Deed to Andrew Anfibolo, recorded January 23, 1922, Book 408 of Deeds, Page 179, Contra Costa County Records, described as follows:

Being a portion of Lot 210, as said Lot is so delineated and designated in that certain Map entitled "Map of the San Pablo Rancho Accompanying and Forming a Part of the Final Report of the Referees in Partition", a certified copy of which was filed in the Office of the County Recorder of said Contra Costa County on March 1, 1894 and a portion of Lot 32, Section 35, Township 2 North, Range 5 West, MDB&M, more particularly described as follows:

Beginning at the southwest corner of Section 36, Township 2 North, Range 5 West, MDB&M, thence due West 660 feet along the North line of a road 30 feet wide to a stake, thence due North 693 feet to a stake, thence due East 660 feet, thence due South, 693 feet to the point of beginning.

EXCEPTING THEREFROM:

That portion of the premises granted to the Broadline Corporation, recorded September 12, 1968, in Book 5707 of Official Records, Page 155.

ALSO EXCEPTING THEREFROM:

The interest conveyed to the City of Richmond by Deed recorded May 22, 1995, Series No. 95-80157 of Official Records, described as follows:

PARCEL 1:

Beginning at the southeast corner of Parcel One as described in the Deed from the Duncan-Harrelson Company to Broadline Corporation recorded September 12, 1968, in Book 5707 of Official Records, Page 155, Contra Costa County Records, thence from said point of beginning along the East line of Parcel One North 01° 03' 12" East 29.17 feet, thence leaving said East line South 84° 17' 55" East 235.48 feet, thence South 01° 05' 48" West 10.09 feet to the South line of said 10.5 acre parcel, thence along said South line North 88° 56' 43" West 234.70 feet to the point of beginning.

PARCEL 2:

Beginning at the northeast corner of Parcel Two as described in the Deed from the Duncan-

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Harrelson Company to Broadline Corporation recorded September 12, 1968 in Book 5707 of Official Records, Page 155, Contra Costa County Records, thence from said point of beginning along the East line of Parcel Two South 01° 03' 12" West 70.22 feet, thence leaving said East line from a tangent bearing of North 36° 04' 29" East along a curve to the right with a radius of 910.00 feet, through a central angle of 1° 41' 05" for an arc length of 26.76 feet, thence North 53° 21' 12" East 68.62 feet, thence North 03° 45' 07" East 6.57 feet to the North line of said 10.5 acre parcel, thence along said North line North 88° 56' 01" West 70.28 feet to the point of beginning.

APN: 408-130-018 and 408-130-037

Exhibit C-2

Being a portion of that certain Parcel of land described in the Deed from Clifford Git Ng and Daisy Ng, his wife, as joint tenants, to the City of Richmond, a municipal corporation, recorded September 29, 1944, Series No. 94-244105, Official Records, and re-recorded June 23, 1995, Series No. 95-098625, Official Records, described as follows:

PARCEL ONE:

Beginning at the southeast corner of said Parcel conveyed to the City of Richmond; thence from said point of beginning, along the southerly line of said Parcel conveyed to the City of Richmond, North 89° 00' 53" West 396.35 feet; thence leaving said southerly line, North 44° 13' 28" East 558.65 feet to a point in the northerly line of said Parcel conveyed to the City of Richmond; thence along said northerly line, South 89° 00' 53" East 14.07 feet to the northeasterly corner of said Parcel conveyed to the City of Richmond; thence along the easterly line of said Parcel conveyed to the City of Richmond, South 1° 02' 37" West 406.98 feet to the point of beginning.

PARCEL TWO:

A non-exclusive easement for roadway, access and utility purposes under, upon, over and across that certain real property described as follows: Being Parcel Three as described in said Deed to the City of Richmond and described as follows: Beginning at the southeast corner of said Parcel conveyed to the City of Richmond; thence from said point of beginning, along the southerly line of said Parcel Three, South 89° 00' 53" East 1120.08 feet to the southeast corner of said Parcel Three; thence along the easterly line of said Parcel Three, North 1° 02' 37" East 20.00 feet to the northeasterly corner of said Parcel Three; thence along the northerly line of said Parcel Three, North 89° 00' 53" West 1120.06 feet to the intersection thereof with the easterly line of said Parcel conveyed to the City of Richmond; thence leaving said northerly line, along said easterly line, South 1° 02' 37" West 20.00 feet to the point of beginning.

APN 408-090-040

Exhibit C-3

PARCEL ONE:

Portion of Lot 201, as designated on that certain Map entitled "Map of the San Pablo Rancho, Accompanying and Forming a Part of the Final Report of the Referees in Partition", filed March 1, 1894, Contra Costa County Records, and a portion of Lot 32, Section 35, Township 2 North, Range 5 West, Mount Diablo Base and Meridian, described as follows: The South 309 feet of the West 282 feet, right angle measurement of the parcel of land described in the Deed to the Duncanson-Harrelson Co., recorded July 8, 1964, Book 4655, Official Records, Page 318.

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EXCEPTING FROM PARCEL ONE: That portion thereof condemned to the City of Richmond, a municipal corporation, in fee simple absolute, pursuant to Final Order of Condemnation of the Superior Court of the State of California, in and for the County of Contra Costa, Case No. C94-05306, a certified copy of which recorded March 26, 1998, Series No. 98-63421, Official Records.

PARCEL TWO:

Portion of Lot 201, as designated on that certain Map entitled "Map of the San Pablo Rancho, Accompanying and Forming a Part of the Final Report of the Referees in Partition", filed March 1, 1894, Contra Costa County Records, and a portion of Lot 32, Section 35, Township 2 North, Range 5 West, Mount Diablo Base and Meridian, described as follows: The North 384 feet of the West 282 feet, right angle measurement, of the parcel of land described in the Deed to the Duncanson-Harrelson Co., recorded July 8, 1964, Book 4655, Official Records, Page 318.

EXCEPTING FROM PARCEL TWO: That portion thereof condemned to the City of Richmond, a municipal corporation, in fee simple absolute, pursuant to Final Order of Condemnation of the Superior Court of the State of California in and for the County of Contra Costa, Case No. C94-05306, a certified copy of which recorded March 26, 1998, Series No. 98-63421, Official Records.

APN 408-130-038 and 408-130-039

Exhibit C-4

PARCEL ONE:

A portion of Lot 201, as shown on the Map of San Pablo Rancho, filed March 1, 1894, in the Office of the County Recorder of Contra Costa County, and also being a portion of Swamp and Overflowed Survey No. 189, described as follows: Beginning at a point on the line between Sections 35 and 36, Township 2 North, Range 5 West, Mount Diablo Base and Meridian, said point being North 693 feet from the southwest corner of said Section 36; thence East 660 feet to a stake; thence North 627 feet to a 3 by 3 redwood stake marked 23, 24, 25, 26; thence along the South line of a road 20 feet wide, West 660 feet to a 3 by 3 redwood stake marked 24, 17, 32, 25, being the northwest corner of the southwest 1/4 of the southwest 1/4 of said Section 36; thence South 627 feet to the point of beginning.

EXCEPTING THEREFROM: That portion of the following described parcel of land lying within the above mentioned Parcel One, described as follows: Beginning at a point on the southerly line of that certain parcel of land described in the Deed from Sanwa Bank California to Color Spot, Inc., recorded March 6, 1991, in Book 16435 of Official Records at Page 659, Contra Costa County Records, which bears along said southerly line North 88° 56' 01" West 307.82 feet from the southeast corner of said parcel conveyed to Color Spot Inc.; thence from said point of beginning leaving said southerly line North 3° 45' 07" East 18.92 feet; thence North 44° 12' 52" East 736.49 feet; thence North 53° 24' 47" East 68.88 feet; thence North 2° 24' 15" East 16.50 feet; thence North 44° 13' 28" East 17.11 feet to the northerly line of said parcel conveyed to Color Spot Inc.; thence along said northerly line North 89° 00' 53" West 763.92 feet to the northwesterly corner of said parcel conveyed to Color Spot Inc.; thence along the northwesterly and westerly lines of said parcel conveyed to Color Spot, Inc. South 65° 33' 12" West 176.90 feet and South 1° 03' 12" West 550.02 feet to the southwest corner of said parcel conveyed to Color Spot Inc.; thence along said southerly line South 88° 56' 01" East 352.26 feet to the point of beginning, as awarded in that Judgment in Condemnation, Superior Court Case No. C93-03756, Contra Costa County, recorded April 4, 2003 as Instrument No. 2003-154972. Official Records.

PARCEL TWO:

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A right of way, not to be exclusive as an appurtenance to Parcel Four-A, above, for use as a roadway for vehicles of all kinds, pedestrians and animals, and as a right of way for water, gas, oil and sewer pipe lines, and for telephone, electric light and power lines, together with the necessary poles or underground conduits to carry said lines, over and under the following described parcel of land: Portion of Lot 201, as shown on the Map of the San Pablo Rancho, filed March 1, 1894, in the Office of the County Recorder of Contra Costa County, and also a portion of Swamp Overflowed Survey No. 189, described as follows: Beginning at a point on the line between Sections 35 and 36, Township 2 North, Range 5 West, Mount Diablo Base and Meridian, said point being due North, 1340.0 feet from the southeast corner of Section 35 and the southwest corner of Section 36; proceeding thence due West 20.0 feet; thence due South 20.0 feet; thence East 680 feet to the West line of the parcel of land described in the Deed from Giovanni Siri to Giambatista Siri, dated October 29, 1956, recorded November 1, 1956, in Book 2873, Page 440, Official Records; thence North along said West line, 2873 OR 440, 20 feet; thence West 660 feet to the point of beginning.

PARCEL THREE:

A right of way, not to be exclusive, as an appurtenance to that parcel of land described in the Deed from East Bay Water Company, a corporation, to Giovanni Siri, Giambatista Siri, Nicola Patrone and Nicolo Siri, dated January 22, 1921, and recorded January 27, 1921, in Book 376 of Deeds, Page 207, Records of Contra Costa County, State of California, for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil and sewer pipe lines, and for television service, telephone, electric light and power lines, together with the necessary poles or conduits over a strip of land 20 feet in width, described as follows: Portion of Lot 201, as shown on the Map of San Pablo Rancho filed March 1, 1894, in the Office of the County Recorder of Contra Costa County, described as follows: Beginning at a point on the South line of a 20 feet in width road which bears North 1320 feet and East 660 feet from the southeast corner of Section 35, Township 2 North, Range 5 West, Mount Diablo Base and Meridian, said point of beginning also being the northeast corner of the parcel of land described in the Deed from East Bay Water Company to Luigi Galino, dated March 1, 1920, recorded March 15, 1920 in Book 354 of Deeds, Page 472; thence from said point of beginning East along said South line, 1120 feet to the West line of the County Road known as Goodrich Avenue; thence North along said West line, 20 feet to the South line of the parcel of land described in the Deed from East Bay Water Company to Michele Credolo, dated November 10, 1926, recorded November 29, 1926, in Book 49, Page 447, Official Records; thence West along said South line and along the South line of the parcel of land firstly described in the Deed from East Bay Water Company to Giovanni Siri, dated December 24, 1923, recorded January 9, 1924, in Book 462 of Deeds, Page 73, being along the North line of said 20 feet in width road, 1120 feet to the southwest corner of said Siri Parcel; thence South 20 feet to the point of beginning.

PARCEL FOUR:

A portion of Lot 201, as shown on the Map of San Pablo Rancho, filed March 1, 1894, in the Office of the County Recorder of Contra Costa County, described as follows: Beginning at the southwest corner of Section 36, Township 2 North, Range 5 West, Mount Diablo Base and Meridian; thence due East 660 feet along the North line of road 30 feet wide, to a stake; thence due North 693 feet to a stake; thence due West 660 feet; thence due South 693 feet into the point of beginning.

EXCEPTING FROM PARCEL FOUR: That portion of said Parcels contained in the Deed from Bio-Rad Laboratories, a California corporation, to George F. Case Company, a California corporation, dated July 14, 1966, and recorded August 11, 1966, in Book 5181, Page 99, Official Records.

PARCEL FIVE:

Portion of Lot 201, as shown on the Map of San Pablo Rancho, filed March 1, 1894, in the Office of the County Recorder of Contra Costa County, described as follows: Beginning at the southwestern corner of the parcel of land shown as Parcel Three in the Deed from Luigi Gallino, et ux, to Augustine J. Gallino, et ux, dated August 12, 1957, in Book 3012, Page 59, Official Records; thence North along the western line of said Parcel Three, 3012 OR 59, to and along the western line of the land shown as Parcel Two in said Deed, 3012 OR 59, a distance of 697 feet; thence East parallel with the southern line of said Parcel Two, a distance of 250 feet; thence South parallel with the western lines of said Parcels Two and Three, 3012 OR 59, 697 feet to the southern line of said Parcel Three; thence along the last named line West, 250 feet to the point of beginning.

PARCEL SIX:

A portion of Swamp and Overflowed Survey No. 189 and a portion of Lot 201, Rancho San Pablo, described as follows: Beginning at a point in the line between Sections 35 and 36, in Township 2 North, Range 5 West, Mount Diablo Base and Meridian, and point of beginning being located due North and distant 693 feet from the southeast corner of said Section 35, this said point of beginning also being the northeast corner of a certain 10.50 acre tract of land sold to Andrew Anfibolo; thence North 627 feet to a 3 by 3 inch redwood stake marked 17, 25, 25 and 32; thence West 494.34 feet; more or less, to the line of tide land survey; thence along this said survey line South 64° 30' West 117.48 feet, more or less, to the direct extension northerly of the western line of said 10.50 acre tract of land sold to Andrew Anfibolo; thence South 480.80 feet, more or less, to the northwest corner of the above mentioned 10.50 acre tract; thence East along the North line of this said 10.50 acre tract 660 feet to a point of beginning.

EXCEPTING THEREFROM: That portion of the following described parcel of land lying within the above mentioned Parcel Six, described as follows: Beginning at a point on the southerly line of that certain parcel of land described in the Deed from Sanwa Bank California to Color Spot, Inc., recorded March 6, 1991 in Book 16435 of Official Records at Page 659, Contra Costa County Records, which bears along said southerly line North 88° 56' 01" West 307.82 feet from the southeast corner of said parcel conveyed to Color Spot Inc.; thence from said point of beginning leaving said southerly line North 3° 45' 07" East 18.92 feet; thence North 44° 12' 52" East 736.49 feet; thence North 53° 24' 47" East 68.88 feet; thence North 2° 24' 15" East 16.50 feet; thence North 44° 13' 28" East 17.11 feet to the northerly line of said parcel conveyed to Color Spot Inc.; thence along said northerly line North 89° 00' 53" West 763.92 feet to the northwesterly corner of said parcel conveyed to Color Spot Inc.; thence along the northwesterly and westerly lines of said parcel conveyed to Color Spot, Inc. South 65° 33' 12" West 176.90 feet and South 1° 03' 12" West 550.02 feet to the southwest corner of said parcel conveyed to Color Spot Inc.; thence along said southerly line South 88° 56' 01" East 352.26 feet to the point of beginning, as awarded in that Judgment in Condemnation, Superior Court Case No. C93-03756, Contra Costa County, recorded April 4, 2003 as Instrument No. 2003-154972. Official Records.

APN 40B-090-031

END OF DOCUMENT

EXHIBIT B
List of Manager's Members, Shareholders and Directors

The Members are:

- Seminole California Management, LLC
- CCC Entertainment Holding Company, LLC
- []

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The Manager is:

- Seminole SV Entertainment, LLC

EXHIBIT C
The Enterprise Investment Policy

To be mutually agreed upon by the Parties subsequent to the execution hereof.

EXHIBIT D
Form of Irrevocable Banking Instructions

To be mutually agreed upon by the Parties subsequent to the execution hereof.

EXHIBIT E
Amounts of Insurance Coverage
(Subject to Insurance Consultant Review)

Manager, acting on behalf of the Tribe, pursuant to Section 3.19, shall cause insurance to be provided as follows:

(a) Builder's Risk. During the course of any new construction or at all times during the period of construction, furnishing and equipping of the Gaming Facility and at all times during any other period of construction (including renovations, alterations and improvements), until final completion thereof, builder's risk insurance ("All Risk" or equivalent coverage) for the Property and the Gaming Facility in an amount not less than the estimated cost, as mutually agreed upon by the Parties, of such construction (including "hard" and "soft" costs), written on a completed value basis or a reporting basis, for property damage, with a deductible not to exceed \$25,000;

(b) All Risk. "All Risk" (or its equivalent) property damage insurance for the Gaming Facility protecting all the insureds with replacements cost valuation and a stipulated value endorsement (to be provided not later than promptly following substantial completion of the Gaming Facility) in an amount not less than the full replacement value thereof and including, among other things, (i) coverage for all physical loss or damage to the Property and the Gaming Facility (including contents); (ii) coverage for flood, earth movement, hurricane and windstorm, mechanical breakdown and electrical injury to the extent available at commercially reasonable rates, as agreed by both Parties; (iii) no exclusions other than industry standard exclusions for property of similar size and location; and (iv) provision for deductible not to exceed \$25,000 (other than for flood, earth movement, hurricane and windstorm, as provided above);

(c) Business Interruption. Business interruption insurance for the Gaming Facility on an "All Risk" basis, to include, among other things (i) coverage against all insurable risks of physical loss or damage, (ii) coverage for earth movement, hurricane, flood and windstorm to the extent available at commercially reasonable rates, limits and deductibles, (iii) a deductible (for other than hurricane, flood or windstorm) of not more than \$10,000 per occurrence, (iv) no exclusions other than industry standard exclusions for property of similar size and location, (v) without application of any deductible, coverage for the Management Fees in an amount not less than the fees payable for three (3) Fiscal Years in connection with the Gaming Facility (as reasonably projected by Manager for the first full three (3) Fiscal Years of the Gaming Facility and thereafter based on the amount actually paid during the immediately preceding three (3) Fiscal Year period), and (vi) coverage for twenty-four (24) months loss of rents with a 72 hour deductible;

(d) General Liability. Commercial general liability insurance on an occurrence basis protecting against claims brought in connection with the Gaming Facility for personal injury, death and damage to and theft of property of third persons, in an amount not less than \$ [] per occurrence, [] annual aggregate. Such limits shall be per location

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and must apply solely to occurrences and events occurring at the Gaming Facility and shall not be used for coverage for any other locations owned by Gaming Facility Company. Such liability insurance shall include such coverage as Manager shall reasonably require and as shall be commercially available, which shall include, but not be limited to, coverage against liability arising out of (i) the sale of liquor, wine and beer on the Gaming Facility premises, (ii) the ownership or operation of motor vehicles, (iii) assault or battery, (iv) abuse and molestation (provided, that insurance for such liability may be covered by a separate insurance policy or policies in the event that it cannot be covered by commercial general liability insurance), (v) false arrest, detention or imprisonment or malicious prosecution, (vi) libel, slander, defamation or violation of the right of privacy, (vii) wrongful entry or eviction, (viii) contractual liability, (ix) products liability, and (x) completed operations. Such insurance shall contain no exclusion other than industry standard exclusions for property of similar size and location and provide for a deductible of not more than [] per occurrence;

[] (e) Excess Liability. Umbrella/excess liability insurance with a minimum of combined single limit, which may be provided under blanket policies of insurance;

(f) Worker's Compensation. Statutory worker's compensation and disability benefits and any other insurance required by applicable law(s) ("Workers Compensation Coverage"), covering all Gaming Facility employees and all persons employed by the Tribe, Manager, contractors, subcontractors, or any entity performing work on the Property or for the Gaming Facility (unless and to the extent provided by such Parties), including employer's liability coverage, all in amounts not less than the statutory minimum, except that employers liability coverage shall be in an amount not less than []

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(g) Fidelity and Dishonesty. Fidelity and dishonesty insurance, and money and securities insurance in such amounts as Manager shall deem advisable but not less than \$5,000,000;

(h) Fiduciary Liability Insurance. Fiduciary liability insurance in an amount not less than \$1,000,000 per occurrence;

(i) Employment Practices Liability. Employment practices liability insurance in the amount of \$5,000,000 per claim;

(j) Additional Insurance. Such additional insurance against other insurable risk as may be required with respect to the Gaming Facility or any part thereof, together with insurance against such other risks as its now, or hereafter may be, customary to insure against in the operation of similar property, considering the nature of the business and the geographic and climatic nature of the Property's location and applicable Legal Requirements. All such policies of insurance described above shall be in the form of "occurrence insurance" to the extent available on a commercially reasonable basis.

To the extent that Manager decides, in its sole discretion, to obtain and maintain professional liability insurance covering Manager, its Affiliates, its employees and its Affiliates' employees in connection with the management and operation of the Gaming Facility, the

premiums, losses, claims and service fees related to such professional liability insurance shall be an Operating Expense.

All liability insurance policies procured and maintained by Manager pursuant to this Agreement will require the insurance carrier to provide and pay for attorneys to defend any legal actions, lawsuits, or claims brought against the Tribe, Manager, or any of their respective Affiliates, officers, directors, agents, or employees.

If either the Tribe or Manager enters into any lease or sublease for premises at the Gaming Facility, including for retail spaces, or any contract for redevelopment or renovation or similar work at, or material on, the Gaming Facility, said lease, sublease or contract shall, require the tenant, subtenant or contractor to maintain, among other coverages, a policy of commercial general liability and property damage insurance providing coverage against liability for injury or death to persons and for property damage occurring in or about such premises in an amount of not less than [] per occurrence, [] annual aggregate and such other insurance as may be required by Manager, provided it is commercially reasonable under the circumstances, and that evidence of such insurance shall be furnished to Manager; provided, however, if the tenant is a restaurant or bar, such tenant shall maintain, among other coverages, a policy of comprehensive public liability and property damage insurance, including coverage for liquor or dram shop liability, providing coverage against liability for injury or death to persons and for property damage occurring in or about such premises in an amount of not less than [] per occurrence and such other insurance as may be required by Manager, provided it is commercially reasonable under the circumstances, and that evidence of such insurance shall be furnished to Manager. If any such leases, subleases or contracts were entered into prior to the commencement of the Term, and the terms of those leases or subleases will not expire or the contract work will not be completed prior to the commencement of the Term, then the Tribe covenants and agrees that, on or before the Commencement Date, it will either cause such tenants, subtenants and contractors to obtain the insurance required by this Agreement, including all applicable coverage listed above, or Manager will obtain such insurance, as an Operating Expense, on behalf of such tenants, subtenants and contractors.

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All policies of insurance except workers compensation and professional liability insurance shall name Manager and its designated Affiliates and members as "named" insureds with respect to the Gaming Facility. All policies of insurance required hereunder shall be in full force and effect at all times from the Effective Date through the end of the Term, and for an additional period of two (2) years after the expiration of the Term with respect to liability coverage. All insurance policies shall have attached thereto: (a) an endorsement that such policy shall not be canceled, non-renewed or materially changed without at least thirty (30) days' prior written notice to Manager, (b) an endorsement to the effect that no act or omission of the Tribe, Manager, or their respective Affiliates shall affect the obligation of the insurer to pay the full amount of any loss sustained; and (c) an endorsement denying to the insurer rights of subrogation against Manager, and their respective Affiliates or members, to the extent rights of recovery against, the Tribe, Manager, and their respective Affiliates or members, have been waived by the insured prior to occurrence of injury or loss and further providing that the insurance will not be invalidated by such a waiver. At least three (3) days prior to the beginning of each Fiscal Year, Manager shall deliver certificates of insurance including copies of all endorsements applicable to named or additional insured parties, waiver or blanket waiver of

subrogation and notice of cancellation or non-renewal to the Tribe evidencing all policies of insurance including existing, additional and renewal policies related to the Gaming Facility. Manager and the Tribe agree that they shall comply with and abide by all applicable Legal Requirements and requirements of any Insurance Company covering any of the risks against which the assets of the Gaming Facility are insured.