



### SHOW ME THE NUMBERS

Lets take a look at the numbers and you can see for your self. I will be posting video of the May 3 meeting for you to look at.

Here is the place where I gathered my information. These are scans of the papers that we received from the May 3rd meeting.

## *Timbisha Shoshone Project Meeting May 3, 2003*

*Prepared By:  
Rishala Corporation  
Developer*

These numbers look great for the tribe. Don't be fooled they are not.

### **Timbisha Shoshone Project Projected Earnings Summary** May 3, 2003 Meeting Prepared by Rishala Corporation - Developer

	Year 1	Year 2	Year 3	Year 4	Year 5	1st Year without Developer Profit
Estimated Gross Cash Revenue	\$ 180,000,000	\$ 198,000,000	\$ 207,000,000	\$ 214,000,000	\$ 220,000,000	\$ 279,000,000
Estimated Net Cash Revenue of Tribe	\$ 11,000,000	\$ 17,000,000	\$ 48,000,000	\$ 61,000,000	\$ 52,000,000	\$ 116,000,000

**Notes:**

<b>One Week Project Cost</b>	
Revenue	\$ 3,000,000
Tribe Net	\$ 212,000

How about these numbers? They look great too at first glance. Let me add some things that are missing.

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STAPLES

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Welcome to members only page

Tribal Business Project				
Projected Income Statement (Cash Basis)				
	Year 1 of Ops.	Year 2	Year 3	1st Year Without Developer Profit
<b>Revenue</b>				
Gaming				
Slot	\$ 143,448,000	\$ 154,227,900	\$ 165,992,800	\$ 222,001,219
Table	\$ 17,191,500	\$ 18,089,200	\$ 19,929,000	\$ 26,792,201
Sub-Total Gaming	\$ 160,639,500	\$ 172,317,100	\$ 185,921,800	\$ 248,793,420
Food & Beverage	\$ 16,200,000	\$ 16,700,000	\$ 17,500,000	\$ 23,527,874
Other	\$ 3,700,000	\$ 4,000,000	\$ 4,300,000	\$ 5,512,175
<b>Total Revenue</b>	<b>\$ 179,539,500</b>	<b>\$ 192,987,100</b>	<b>\$ 207,721,800</b>	<b>\$ 277,833,469</b>
<b>Expenses</b>				
Gaming	\$ 48,480,120	\$ 50,154,087	\$ 52,387,485	\$ 70,724,800
Food & Beverage	\$ 14,888,000	\$ 16,386,000	\$ 17,156,000	\$ 23,085,042
Other	\$ 3,000,700	\$ 3,244,090	\$ 3,525,500	\$ 4,671,928
Administrative & General	\$ 19,748,015	\$ 21,771,033	\$ 22,818,368	\$ 30,885,735
Security	\$ 3,880,730	\$ 3,866,618	\$ 4,144,400	\$ 6,879,225
Marketing	\$ 11,988,873	\$ 12,869,174	\$ 13,462,366	\$ 18,132,482
Utilities	\$ 1,798,385	\$ 1,879,286	\$ 2,074,215	\$ 2,789,610
Property Ops., Maint. Cap Exp., Reserves	\$ 4,489,413	\$ 4,868,144	\$ 5,186,833	\$ 6,974,032
<b>Total Operating Expenses &amp; Reserves</b>	<b>\$ 104,888,229</b>	<b>\$ 113,897,518</b>	<b>\$ 120,769,832</b>	<b>\$ 162,488,954</b>
<b>Net Cash Revenue Before Rent</b>	<b>\$ 74,651,271</b>	<b>\$ 79,089,582</b>	<b>\$ 86,951,968</b>	<b>\$ 115,344,515</b>
<b>Margin Before Rent</b>	<b>41.71%</b>	<b>41.73%</b>	<b>41.78%</b>	<b>41.78%</b>
<b>Total Rent</b>	<b>\$ 66,589,432</b>	<b>\$ 68,840,843</b>	<b>\$ 77,233,878</b>	<b>\$ -</b>
<b>CASH AVAILABLE TO TRIBE</b>	<b>\$ 10,946,844</b>	<b>\$ 10,248,739</b>	<b>\$ 9,718,090</b>	<b>\$ 115,344,515</b>
<b>Margin</b>	<b>6.1%</b>	<b>5.3%</b>	<b>4.7%</b>	<b>41.78%</b>

What is not showing is what is called "incentive rent". It is from the development agreement term sheet.

- (b) Monthly payments in an amount equal to 15% of the gross revenues of the gaming facility ("incentive rent"). Incentive rent commences after base rent is paid in full and ends when the Development Agreement terminates.

5. The term of the Development Agreement commenced on November 5, 2002 and ends on the 10<sup>th</sup> anniversary after the date upon which base rent is paid in full.

Lets use the numbers that the developer supplied which shows the base rent being paid by the 3rd year. Lets also say for simplicity that the casino makes the same money for the next 10 years after base rent is paid. Remember these numbers came from the developer also the developer owns the building that we have paid for. There is a land lease agreement that is set up for 25 years so at the end of the first 13 years there is nothing to say that we will own our casino. There a lot of things that are going that we are not being told about as we find things we will post them.

Gross revenue after 3rd year	\$278,864,269.00
Incentive rent per year	\$50,195,568.42
Grand Total 10 years of incentive rent	\$501,955,684.20
Base rent for 3 years	\$167,224,845.00

Grand Total to developer 13 years	\$669,180,529.20
Gross revenue after Incentive rent	\$228,668,700.58
cash available to tribe	\$66,245,709.58
Tribe keeps total 13 years this total does not include what we will have to pay the city of Hesperia or the state of California	\$739,408,437.80



1. This Lease is intended to be only for the development and leasing of the Gaming Facility and its Equipment, and nothing herein is intended to be and shall not be construed as constituting a contract for management services as contemplated by 25 U.S.C. §2711 or any successor or related statute or regulation. The parties acknowledge that neither Developer nor any person or entity owned or controlled by, or affiliated with Developer, is to have any management authority or responsibilities with respect to the Facility or Gaming activities whatsoever, except in the course of exercising security rights under the Transaction Documents.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged by the parties, the parties hereby agree, as of the date first stated above, as follows:

#### **ARTICLE 1 DEFINED TERMS**

As used in this Lease, capitalized words and terms shall have the meanings specified herein or set forth in the Master Definitions List, incorporated herein by reference and attached as Exhibit 1. Such definitions shall be equally applicable to both singular and plural forms of any of the words and terms therein defined.

#### **ARTICLE 2 PRE-DEVELOPMENT AND DEVELOPMENT PERIODS**

Section 2.1 Pre-Development Period. The Pre-Development Period shall commence upon the Execution Date of this Lease and continue until the notice to proceed is issued pursuant to the Owner/Contractor Agreement.

Section 2.2 Development Period. The Development Period shall commence upon the expiration of the Pre-Development Period and continue until the Commencement Date.

Section 2.3 Termination of Developer's Obligations. If at any time during the Pre-Development Period, Developer concludes in good faith that the Tribe is not likely to be successful in having land placed into trust which would be eligible for gaming pursuant to IGRA, or that the cost and/or associated risk are no longer reasonable given the expected return, Developer may notify the Tribe that it is withdrawing. Upon withdrawal, Developer shall have no further obligations to the Tribe except for costs and expenditures that were authorized by Developer prior to withdrawal. Developer will have the exclusive right for two (2) years from withdrawal to find and purchase an alternate parcel of land on which to build a Facility, and the Tribe agrees to contract with the Developer for the development of a Facility on such alternate parcel on terms and conditions substantially identical to the terms and conditions of this Lease, provided, however, that the Developer continues to make the monthly advances to the Tribe pursuant to Section 4.5.A. during the period that the Developer continues to exercise his exclusive rights.

**ARTICLE 3**  
**ITEMS OF PERSONALITY LEASED**

Section 3.1 Equipment. Developer, pursuant to and in accordance with this Lease, hereby leases to the Tribe, and the Tribe hereby hires and leases from Developer, the Equipment, which shall be specifically identified in a Master Equipment List agreed to by the parties.

Section 3.2 Structure. Developer, pursuant to and in accordance with this Lease, hereby leases to the Tribe, and the Tribe hereby hires and leases from Developer, the Structure.

**ARTICLE 4**  
**DEVELOPMENT PROCESS**

Section 4.1 Construction Management. From and after the Execution Date, Developer shall be responsible for supervision of the development, installation and construction of the Structure on a day-to-day basis. In discharging its duties, Developer shall use commercially reasonable efforts to ensure that (i) the Structure shall be constructed on time and within the Development Budget (as hereinafter defined), in accordance with all approved plans and specifications as contemplated herein; (ii) all contractors carry out in all material respects the duties and responsibilities prescribed under their respective contracts, and follow the Tribe's Indian preference and subcontractor bidding guidelines, and (iii) such development, installation and construction of the Structure complies in all material respects with state and local building codes, which the parties concur do not otherwise apply on the Trust Lands, and the use of which is not intended in any manner to confer jurisdiction over the Trust Lands on behalf of state or local authorities.

Section 4.2 Consultation.

A. Representatives. The parties hereby agree to designate one or more individuals who shall serve as their representatives (the "Representatives") and who shall meet as often as necessary (but no less frequently than once per week unless the parties otherwise agree) to provide ongoing supervision, information and consultation with respect to the development, design, installation, and construction of the Facility.

B. Independent Inspector. Notwithstanding the generality of the foregoing, the Tribe shall have the right, at its own cost and expense, to engage a qualified independent inspector, who shall have the right, together with the Tribal Representative and subject to such reasonable time and place restrictions as Developer may impose, to inspect all construction-related activities and invoices.

Section 4.3 Architect and Engineer.

A. Scope of Work. Developer shall select, with the approval of the Tribe, an architect and, if deemed appropriate by Developer, a civil engineer to provide the following services (the "Architect Services"):

1. Design the Facility;



2. Prepare plans and specifications, and modifications thereof, for the development, installation and construction of the Facility;

3. Inspect the Structure and the Facility and review the appropriateness of requests for payments submitted by the contractor during the development, installation and construction of the Structure; and

4. Notify Developer and the Tribe of the substantial completion of the Structure and of the Facility.

B. Approval of Architect/Engineer. Developer shall provide to the Tribe, in writing, the names and qualifications of a recommended architect and, if appropriate, a civil engineer. If there is a reasonable basis for the Tribe to reject a recommendation, and the Tribe rejects such recommendation, the Tribe shall notify Developer of such rejection and provide a written description of the basis for such rejection. Developer shall then submit additional recommendations until the Tribe approves a recommendation. The failure of the Tribe to reject a recommended architect or engineer within ten (10) Business Days after the recommendation is submitted shall be deemed Tribal approval of the recommended architect or civil engineer. Upon such approval, the recommended architect will be the "Architect" under this Agreement, and the recommended engineer, if any, will be the "Engineer" under this Agreement. Developer shall then enter into such agreements as may be necessary to acquire their services.

C. Preparation of Owner/Architect Agreement. Upon the Tribe's acceptance of an Architect and, if any, Engineer, Developer shall cause to be prepared a Owner/Architect (Engineer) Agreement between Developer and the Architect (Engineer), to be signed by Developer and the Architect (Engineer). The Owner/Architect (Engineer) Agreement shall be consistent with this Agreement, and shall expressly name the Tribe as a third party beneficiary of such agreement. The Tribe shall be provided with the right to participate meaningfully in the design process, which right will be specifically stated in the Owner/Architect (Engineer) Agreement. The Owner/Architect (Engineer) Agreement shall provide that additional, unexpected costs caused by the errors and/or omissions of Architect or of Engineer, if any, shall be borne by Architect or Engineer and not Developer or the Tribe. Architect and Engineer shall provide Developer and the Tribe with proof of errors and omissions insurance in an amount satisfactory to Owner and the Tribe. Architect and Engineer's errors and omissions insurance shall designate the Tribe as an additional insured and loss payee.

D. Design Standards. Neither the State nor any political subdivision thereof has the jurisdiction or power to enforce any building, fire, energy, or life/safety code or requirements on the Trust Lands. The Tribe, however, hereby finds and determines that the application of the standards and methods included in such codes and requirements will be in the best interest of the Tribe. Accordingly, Developer shall cause the Owner/Architect (Engineer) Agreements to require the Architect and Engineer to design, install and construct the Structure to comply in all material respects with state and local building codes that would be applicable if the structure were not located on the Trust Lands, and, any applicable tribal codes in effect at the time the Structure is constructed and installed. Using qualified inspectors, Developer shall conduct such inspections as are necessary to ensure compliance in all material respects with these codes. Nothing in this Section grants or shall be deemed to grant the State or any political subdivisions thereof any jurisdiction over any property owned by or held for the benefit of the



Tribe, including, without limitation, the Trust Lands, or the right to apply or enforce any such building, fire, energy or life/safety code or requirements with respect to such property, including, without limitation, the Trust Lands.

E. Approval of Plans and Specifications. Upon receipt from the Architect and any Engineer of plans and specifications for the Structure and the Facility (which plans and specifications may be submitted in stages, rather than all at one time), Developer shall provide such plans and specifications to the Tribal Representative. The Tribal Representative shall, within five (5) Business Days thereafter, review the plans and specifications and forward the same to the Tribe for formal approval. If there is a reasonable basis for Tribe to reject the plans and specifications, and the Tribe rejects such plans and specifications, the Tribe shall notify Developer of such rejection and provide a written description of the basis for such rejection. Developer shall then submit revised plans and specifications, to the Tribe's Representative until the Tribe approves a recommendation. The failure of the Tribe to reject submitted plans and specifications within twenty (20) Business Days after such plans and specifications were submitted to the Tribal Representative shall be deemed Tribal approval of such plans and specifications; provided, however, such plans and specifications shall not be deemed approved if, within such twenty (20) Business Day period, the Tribe requests an extension of up to an additional thirty (30) days to review the submitted plans and specifications. Any requested extension of time shall be automatically granted and shall commence upon the date of the extension request. Upon the approval of such plans and specifications by the Tribe, Developer shall notify the Architect and any Engineer that such plans and specifications have been approved. No installation or construction of the Structure shall begin until all plans and specifications for such installation or construction shall have been approved under this Section.

Section 4.4 General Contractor.

A. Recommendation. Developer shall recommend to the Tribe one or more contractors to install and construct the Structure and the Facility in accordance with the plans and specifications approved pursuant to Section 4.3.

B. Approval. The approval process for the General Contractor shall be the same as that set forth in Section 4.3 as to the Architect and/or Engineer, provided, however, that the Tribe, in its sole discretion, may reject any General Contractor who is an Affiliate of the Developer.

C. Contract with Contractor. Upon approval of a General Contractor, Developer shall cause to be prepared an Owner/Contractor Agreement between Developer and the General Contractor. The Owner/Contractor Agreement, including any general and special conditions, shall be consistent with this Agreement, and shall name the Tribe as a third party beneficiary of such agreement.

D. Commencement and Completion. The Owner/Contractor Agreement shall provide for commencement and completion of the installation and construction of the Structure as soon as practicable after said agreement is executed, but no later than nine (9) months after such execution.

E. Payment and Performance Bonds. Unless the parties determine otherwise, the Owner/Contractor Agreement shall require the General Contractor to provide to Developer and the Tribe a payment bond and a performance bond (the "Contractor's Bonds") in the full amount of the costs of installation and construction of the Structure and the performance of the work under the Owner/Contractor Agreement and issued by a surety reasonably acceptable to Developer. The form of the Contractor's Bonds shall be approved by legal counsel for both Developer and the Tribe, and shall name the Tribe as a loss payee.

F. Contract Terms. To enable Developer to maintain total development, installation and construction costs within the Development Budget, Developer shall have the right to require that any Owner/Architect (Engineer) Agreement and any Owner/Contractor Agreement provide for either a fixed fee or a guaranteed maximum fee in an amount reasonably established by the parties.

G. Insurance. Any Owner/Contractor Agreement shall require that the General Contractor and all subcontractors provide to Developer and the Tribe evidence of insurance as follows:

1. Workers Compensation, in accordance with state law;
2. Commercial General Liability with a combined single limit for bodily injury and property damage of not less than one million dollars (\$1,000,000) per occurrence to protect Contractor and each subcontractor against claims for bodily injury or death and damage to the property of others;
3. Automobile Liability on owned and non-owned motor vehicles used on the site or in connection therewith for a combined single limit for bodily injury or death and property damage of not less than one million dollars (\$1,000,000) per occurrence; and
4. Builder's Risk Insurance (fire and extended coverage) on all work in place and/or materials stored at the site.

All insurance shall be carried with companies that are financially responsible and admitted to do business in the State of California. Where applicable, policies for such insurance shall designate the Tribe as an additional insured and loss payee. The General Contractor and all subcontractors shall furnish to the Tribe and Developer certificates of such policies prior to commencement of construction activities, and at such other times as the Tribe may reasonably require. The fact that the Tribe will be named as an additional insured in all insurance contracts is in no way to be construed as a waiver of the Tribe's sovereign immunity by the issuance of those policies.

H. As-Built Drawings. Any Owner/Architect (Engineer) Agreement shall require Architect to provide Developer and the Tribe with as-built drawings that reflect the construction of structures or services performed as completed under the terms of the Owner/Contractor Agreement, as reported by the General Contractor. Any Owner/Contractor Agreement shall require the General Contractor to provide Architect with sufficient information to be used in the preparation of permanent as-built drawings. The Owner/Contractor Agreement shall also provide that the General Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground



lines by depth from grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks. Such requirements shall be included in all subcontracts, at every tier. The Owner/Contractor Agreement shall require that it is the responsibility of the General Contractor to ensure delivery of as-built records prepared by subcontractors to Architect.

I. Contractor's Warranties. Any Owner/Contractor Agreement shall provide that the General Contractor warrants that the work performed under the Owner/Contractor Agreement will be completed in a workmanlike manner and will be warranted to be free of defects for a period not less than twelve (12) months. Any such Contractor's Warranties shall bind subcontractors as well as the General Contractor and shall include all applicable warranties under state law. Any Owner/Contractor Agreement shall provide also that the General Contractor warrants that all construction or installation performed under such agreement meets or exceeds (i) all standards of the construction industry; (ii) state or local building codes that would apply if the Structure were not located on the Trust Lands; and (iii) any applicable tribal codes whichever is more stringent. The Contractor's Warranty will commence on the date the Architect provides a certificate of substantial completion. During such warranty period, Contractor and/or subcontractors shall be required to repair any construction defect discovered.

J. Retainage. Any Owner/Contractor Agreement shall provide for retainage in the amount of ten percent (10%) of the contract. Retainage will be held by Developer until the Commencement Date. If, after adequate notice to Contractor, repairs of construction defects or repairs under product or manufacturer's warranty are not completed, Developer may use retainage to complete such repairs. At the Commencement Date and at the written request of Contractor, any and all retainage remaining will be paid to Contractor.

#### Section 4.5 Budgets.

A. Pre-Development Budget. As soon as practical following the execution of this Agreement, Developer, in consultation with the Tribal Representative, shall provide to the Tribe for approval, a proposed Pre-Development Budget, which shall include the costs of tasks necessary and appropriate required to be completed prior to the start of construction, including, but not limited to any and all costs related to the negotiation, preparation, and execution of this lease and incurred by the Developer or the Tribe; the costs of design work and property acquisition and all costs associated with the preparation and pursuit of approval of an application to have property taken into trust by the Secretary for the benefit of the Tribe; and any funds advanced to the Tribe, including but not limited to funds for legal services, related tribal expenses, the acquisition of property, and other advances agreed to by the parties. Commencing on the first day of the first full month after the date of the transition document, and ending on the months that contain the Commencement Date or the date this Lease is terminated or the Developer withdraws pursuant to Section 2.3 of this Lease, whichever is earlier, the Developer shall advance the Tribe Ten Thousand Dollars (\$10,000) per month to be used to defray its necessary and reasonable expenses in the predevelopment and development periods, provided, however, that the Developer shall pay separately the reasonable and necessary fees and the reasonable and necessary expenses incurred by the Tribe's attorney.

B. Development Budget. Prior to the conclusion of the Pre-Development Period, Developer, in consultation with the Tribal Representative, shall provide to the Tribe for



approval, a proposed budget for the development, installation and construction of the Facility. The Development Budget shall include, without limitation, all costs associated with the preparation and pursuit of approval of an application to have property taken into trust by the Secretary for the benefit of the Tribe if such costs were not included in the Pre-Development Budget; all design and construction costs not included in the Pre-Development Budget, costs of acquisition and installation of Equipment, and Start Up Expenses. If there is a reasonable basis for the Tribe to reject the Development Budget, and the Tribe rejects such Development Budget, the Tribe shall notify Developer of such rejection and provide a written description of the basis for such rejection. Developer, in consultation with the Tribal Representative, shall then submit revisions to the Development Budget until the Tribe approves a recommendation. The failure of the Tribe to reject a submitted Development Budget within Twenty (20) Business Days after submission shall be deemed Tribal approval of such Development Budget; provided, however, such Development Budget shall not be deemed approved if, within such 20 Business Day period, the Tribe requests an extension of up to an additional thirty (30) days to review the submitted Development Budget. Any requested extension of time shall be automatically granted, and shall commence upon the date of the extension request.

Developer shall supervise the progress of development, installation and construction of the Facility, and take such action as may be necessary to maintain costs within the Development Budget. In doing so, Developer shall receive and review requests for payments from the Architect, any Engineer and the General Contractor under the Owner/Architect (Engineer) Agreement and the Owner/Contractor Agreement, respectively. Developer, upon receipt of such a request for payment, shall provide a copy of such request along with all documentation submitted in support of such request for payment, to the Tribal Representative and any independent inspector engaged by the Tribe as provided for in Section 4.2(B) hereof, and such Tribal Representative and any independent inspector must approve or disapprove the request for payment within four (4) Business Days. The failure of the Tribal Representative and any independent inspector to approve or disapprove a request for payment within four (4) Business Days after the request for payment is submitted shall be deemed Tribal approval of the request for payment. If a request for payment complies with the terms of the applicable agreement, Developer shall promptly pay the same. Expenditures made under contracts previously approved and within the Development Budget shall not require further approval. In reviewing such requests, Developer shall be entitled to reasonably rely on any certification by the Architect, Engineer or Contractor regarding such request, including any certification regarding the extent of work completed. Developer shall maintain accurate records regarding each authorization for such payment, and notwithstanding the prior submission of all requests for payment to the Tribal Representative and/or independent inspector, Developer shall provide the Tribe with a written monthly report of all such payments.

Developer, as soon as reasonably practical after the Commencement Date, shall deliver to the Tribe, a final, actual Development Budget (the "Final Budget"), listing all Pre-Development Costs, Construction Costs and Start-up Expenses incurred, provided, however, that the Final Budget shall not include any Construction Costs or Start-up Expenses not authorized by the Tribe pursuant to this Lease, or which were paid by Developer despite the payee's failure to comply with the terms of the Architect and Engineering Agreements or the Owner/Contractor Agreement, respectively.



Section 4.6 Tribal Approval. Developer shall submit to the Tribe for approval or disapproval:

- A. All architectural and engineering plans and specifications; and
- B. All change orders under the Owner/Contractor Agreement, including without limitation any claim by the General Contractor for payment for additional work or for additional time to complete the work described in the Owner/Contractor Agreement.

Developer shall submit to the Tribe with each request for approval of such revision, change order or claim, a written statement of the amount, if any, by which the cost of the development, installation and construction of the Structure or of the Facility will increase or decrease if such revision, change order or claim is approved. The Tribe's approval of such revision, change order, or claim shall not be unreasonably withheld. Notwithstanding the foregoing, the Tribe shall approve any reasonable revision, change order or claim which is attributable to any delay or failure of the Tribal Representative to make in a timely manner any decision or selection required under this Agreement or required to administer the Architect and Engineering Agreements or the Owner/Contractor Agreement and the work contemplated therein.

Section 4.7 Multiple Shifts. With the prior written approval of The Tribe, the Development Budget may provide for the use of multiple shifts to complete the installation and construction of the Structure and the Facility.

Section 4.8 Selection, Delivery and Installation of Equipment. The Tribe shall have the opportunity to approve or disapprove the manufacturers, contractors, dealers, or suppliers from whom Developer purchases the Gaming Devices (the "Vendors"). Notwithstanding the generality of the foregoing, Developer shall work with the Vendors to arrange for and to coordinate the delivery and installation of the Gaming Devices, and to insure that delivery and installation are in time for the Commencement Date and any training that must precede such date. Developer shall require that pursuant to contracts or agreements for the installation of Gaming Devices, all vendors warrant that installation performed under such contracts or agreements meets or exceeds recognized standards of the industry and/or applicable law, whichever is more stringent.

Section 4.9 Access to Trust Lands. The Tribe warrants and represents that Developer, the Architect, Engineer, General Contractor, and their respective employees, agents and independent contractors shall have complete and unrestricted access to the Trust Lands for purposes of developing, installing and constructing the Structure, and installing the Equipment.

**ARTICLE 5**  
**LEASE TERM**

Section 5.1 Term. The term of this Lease (the "Term") shall commence upon its execution by the Parties and shall continue thereafter until the tenth anniversary of the date upon which the total Base Rent is paid in full, unless sooner terminated by the parties as provided herein, provided that, if during the Term, the Parties agree to pursue a substantial expansion of the Facility to be funded by Developer, then the final Pre-Development Costs, Construction

Costs, and Start-Up Expenses ("Development Costs") of such expansion shall be repaid as Base Rent pursuant to this Lease, and the Term shall continue until the tenth anniversary of the date upon which such Base Rent is paid in full.

Section 3.2 Buyout. Thirty (30) months after the total Base Rent to be paid to Developer has been paid in full, the Tribe may terminate this Lease by paying to the Developer amount calculated as follows: Multiply the average monthly Gross Revenues of the Facility for the twelve months immediately preceding by the number of months that remain in the Term. Multiply the product by eighteen percent (18%), and multiply that product by eighty-five percent (85%).

#### ARTICLE 6 RENTAL PAYMENTS

Section 6.1 Base Rent. The Tribe shall pay to Developer, in the manner set forth herein and in the Cash Management Agreement, monthly installments of Base Rent. The Base Rent due hereunder is the sum of (i) Initial Base Rent, an amount equal to the final total Pre-Development Costs, Construction Costs and Start-Up Expenses ("Development Costs"), as set forth in the Final Budget, and the Development Costs of any substantial expansion of the Facility agreed to by the Parties and funded by Developer, together with interest on the unpaid balance thereof at a rate equal to the Bank of America Prime Rate plus one percent (1%) as of the date funds are actually disbursed, amortized over sixty (60) months; and (ii) the Additional Base Rent, which shall equal seventy-five percent (75%) of the Net Revenue earned in the preceding month, and which shall be considered an accelerated payment of principal.

Section 6.2 Payment of Base Rent. The Base Rent shall begin accruing on the Commencement Date. Base Rent resulting from a substantial expansion of the Facility shall begin accruing upon the opening of such expansion to the public. The first monthly Base Rent payment shall be due on or before the fifteenth (15th) day of the next successive month, and shall continue each month thereafter, until the total Development Costs reimbursable to Developer, plus interest, have been paid in full. The Development Costs may be prepaid without any prepayment penalty.

Section 6.3 Incentive Rent. The Tribe, in addition to the Base Rent payment provided for in Sections 6.1 and 6.2 above, shall pay to Developer, in the manner set forth herein and in the Cash Management Agreement, monthly rent in an amount equal to eighteen percent (18.0%) of the Gross Revenues of the Facility earned in the preceding month (the "Incentive Rent").

Section 6.4 Payment of Incentive Rent. Incentive Rent payments due hereunder shall be payable on or before the fifteenth (15th) day of each month for the proceeding month, and shall first become due and commence on the fifteenth (15th) day of the month after the month in which the total Base Rent is paid in full, and continuing on or before the fifteenth (15<sup>th</sup>) day of each month thereafter, through and including the month following the month in which the term of this Lease expires.

Section 6.5 Security. The Tribe's payment of Base Rent and Incentive Rent will be secured by the Pledged Revenues, subject to the lien granted the Developer in the Cash Management Agreement and the prior application of Pledged Revenue to payment of Operating



Expenses pursuant to and in accordance with the terms and provisions of the Cash Management Agreement. The Tribe shall execute such instruments as Developer or the Depository, in their sole discretion, request in order to perfect the security interest in the Pledged Revenues.

Section 6.6 Other Transaction Documents. The Cash Management Agreement secures the performance of the Tribe's obligations under the Transaction Documents. Notwithstanding any term or provision of the Cash Management Agreement to the contrary, the parties expressly acknowledge and agree that Base Rent and Incentive Rent shall be due and payable solely pursuant to the terms and provisions hereof, and nothing contained in the Cash Management Agreement is intended or shall be construed to alter, modify, amend or reduce the Tribe's obligations to make Base Rent and Incentive Rent payments due Developer hereunder. In the event of any ambiguity or inconsistency between the terms and provisions of this Lease and the terms and provisions of the Cash Management Agreement, the terms of this Lease shall control.

#### ARTICLE 7 OWNERSHIP

Section 7.1 No Sale or Security Interest Intended. The parties expressly acknowledge and agree that this Lease constitutes a lease or bailment of the Structure and Equipment and not a sale or the creation of a security interest. Developer is the sole and exclusive owner of the Structure and Equipment. The Tribe shall acquire any right, title, or interest in the Structure and Equipment on the expiration of the Lease Term; until then, it has only the right to possession and use as provided for in this Lease. Notwithstanding the generality of the foregoing, title to the Structure and Equipment shall vest in the Tribe upon the later of (a) the termination of this Agreement, or (b) Payment by the Tribe to Developer of all Base and Incentive Rent due under this Lease, and Developer shall provide any necessary certificates, warranties, or other indicia of title as may be necessary to effect the vesting of such title in the Tribe.

Section 7.2 Labels. Developer shall have the right to place and maintain on the exterior or the interior of each and every piece of Equipment such inscription as Developer deems reasonably necessary to demonstrate Developer's ownership of the Equipment. If this Lease is assigned by Developer, Developer's assignee shall have the same rights as Developer under this Section 7.2. the Tribe shall not remove, obscure, deface or obliterate the inscription or permit any other person to do so.

Section 7.3 Subordination. The rights of the Tribe under this Lease shall be subject and subordinate to certain security interests in the Structure and Equipment that may be granted by Developer solely in connection with the installation and construction of either the Structure or the Equipment, or any of it individually, as the parties shall set forth in a Senior Financing List as soon as practical, but in no event later than the Commencement Date. The Senior Financing List shall be approved by the parties and incorporated herein.

Section 7.4 Operating Expenses. Except as expressly set forth herein, any and all costs or expenses that the Tribe or the Facility incurs after the Commencement Date in connection with the installation, operation and maintenance of the Structure and Equipment shall be deemed Operating Expenses.

**ARTICLE 8  
MAINTENANCE AND REPAIR**

Section 8.1 A. Responsibilities of the Parties. The Tribe expressly assumes all obligation and liability with respect to the possession of the Equipment, and for the use, operation, condition and storage thereof during the Lease Term.

B. The Developer shall maintain the Structure in good condition and working order, allowing for reasonable wear and tear, and shall provide all necessary maintenance, including but not limited to janitorial services, and routine repairs and maintenance of the Facility, the structure, furniture and fixtures (but not including maintenance or repair of any Gaming Device) at cost.

C. The Base Rent and Incentive Rent due hereunder shall not be prorated or abated while the Structure or any of the Equipment is being serviced or repaired. This provision, however, in no way modifies Sections 6.1 and 6.2 as to how Base Rent and Incentive Rent are calculated and paid.

D. Developer shall not be under any liability or obligation in any manner to provide service, maintenance, repairs or parts for any Gaming Device; provided, however, that in the event the Tribe fails to fulfill its obligations under this Section 8.1, Developer shall have the right to enter the Facility and provide the appropriate service, maintenance or repairs, and thereafter to add the actual costs thereof to the Initial Base Rent due in the subsequent month.

Section 8.2 Accessions. All installations, replacements and substitutions of parts or accessories with respect to the Structure or any Equipment shall constitute accessions and shall become part of the Structure and Equipment and owned by Developer.

**ARTICLE 9  
USE OF THE STRUCTURE AND EQUIPMENT**

Section 9.1 Rights of The Tribe. The Tribe shall be entitled to the absolute right to the use, operation, possession and control of the Structure and Equipment during the Lease Term, provided the Tribe is not in default of any provision of this Lease or any of the Transaction Documents. The Tribe's rights under this Section 9.1 are subject to any security interest Developer may have given or may give to any third party during the Lease Term solely in connection with the installation and construction of either the Structure or the Equipment. Developer, however, shall not attempt to convey as security to any third party any greater interest in this Lease than Developer possesses. The Tribe shall employ and have absolute control, supervision and responsibility over any and all operators or users of the Structure and any of the Equipment, and any damage or injury to the Structure or Equipment resulting from the acts or omissions of such operators or users shall be the sole and absolute responsibility of the Tribe.

Section 9.2 Duties of The Tribe. The Tribe shall use the Structure and Equipment in a careful and proper manner and shall agree not to permit any of the Structures or Equipment to be operated or used in an unsafe manner or in violation of any Applicable Law.



Section 9.3 Commercial Use Limitation. The Tribe warrants and represents that the Structure and Equipment will be used solely for commercial purposes.

Section 9.4 Location. The parties expressly acknowledge that the Structure and Equipment is intended for use in connection with the Tribe's operation of the Facility, and that the Structure and Equipment shall not be removed from the Trust Lands.

#### **ARTICLE 10 DEVELOPER'S RIGHT OF INSPECTION AND REPAIR**

Developer, at its discretion and its own expense, during the Tribe's regular business hours, and with five (5) days prior written notice, shall have the right to enter on to the Trust Lands and enter the Facility or other storage location for purposes of inspection.

#### **ARTICLE 11 WARRANTIES**

Section 11.1 No Warranties by Developer. The parties expressly acknowledge that the Tribe is the party responsible for selection of the Structure, the Equipment, and the Vendors.

**DEVELOPER MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE STRUCTURE OR EQUIPMENT, ITS MERCHANTABILITY, HABITABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.**

and as to Developer, the Tribe leases the Structure and Equipment "As Is." The parties further expressly acknowledge that Developer has provided no warranty, guarantee or representation as to the classification of any Equipment pursuant to IGRA.

Section 11.2 Assignment of Developer's Warranties. Developer shall assign to the Tribe all Vendor warranties applicable to the Structure or Equipment to enable the Tribe to obtain any warranty service available for the Structure or Equipment. Developer agrees that it shall require, as a condition of Developer's purchase of the Structure or Equipment, a signed agreement from each Vendor that all warranties, agreements and representations made by Vendor to the Tribe or Developer may be enforced by the Tribe in its own name. Notwithstanding the generality of the foregoing, Developer appoints the Tribe as Developer's attorney in fact for the purpose of enforcing any warranty. Any enforcement of any Vendor warranty by the Tribe shall be at its own expense and shall in no way render Developer responsible to the Tribe for the performance of any warranties.

Section 11.3 No Action Against Developer. Notwithstanding any term or provision of this Lease to the contrary, if the Structure or Equipment is not properly installed, does not operate as represented or warranted by the Vendor, or is unsatisfactory for any reason, the Tribe shall make any claim solely against the Vendor, and shall continue to make all Base Rent and Incentive Rent payments due Developer hereunder.

Section 11.4 No Agency Relationship. The Tribe understands and agrees that neither any Vendor, nor any employee or other agent of any Vendor, is an agent of Developer. No employee or agent of any Vendor is authorized to make any warranty or representation on behalf or in the name of Developer, or to waive, alter, amend or modify any term or provision of this Lease. No representation or warranty as to the Structure or Equipment or any other matter by a Vendor, or any employee or agent of any Vendor, shall in any way affect the Tribe's duty to pay Base Rent and Incentive Rent to Developer pursuant hereto, and to perform its other obligations, as set forth herein.

## **ARTICLE 12 TAXES AND OTHER CHARGES**

Section 12.1 Non-Tribal Taxes. Any taxes, license fees or similar levies imposed upon Developer or upon the Structure or Equipment by any non-tribal Governmental Authority during the Lease Term shall be paid as Operating Expenses, provided, however, that any Federal, State or municipal income taxes assessed against or due from Developer or any Affiliate of Developer arising from their receipt of Base Rent or Incentive Rent shall not be paid as an Operating Expense and shall be the responsibility of the Developer. The Parties agree to work to arrange purchases and contracts so as to minimize the liability, if any, of the Parties for any taxes imposed by any non-tribal Governmental Authority, including but not limited to arranging for purchases by the Tribe when to do so is practicable and will reduce such tax liabilities.

Section 12.2 Tribal Taxes. In addition to licensing fees provided for in Section 12.3 of this Agreement, the Tribe reserves the right to enact, impose or collect any taxes, fees or other charges of any nature whatsoever with respect to (i) installation and construction of the Structure or the Equipment; (ii) the Facility; (iii) labor and goods and services the Facility purchases; and (iv) labor and goods, furniture, fixtures or equipment used by the Facility, provided, however, that such taxes, fees or charges shall not reduce the Net Revenue, or be imposed or collected, directly or indirectly, from Developer or any employee, director, officer or shareholder of Developer.

Section 12.3 Tribal License Fee. To fulfill its regulatory responsibilities under IGRA, the Tribal Gaming Commission may require that Developer obtain tribal licenses or work permits. Upon satisfactory completion and approval by the Tribal Gaming Commission of any required background investigations conducted pursuant to this Agreement and subject to the terms of the Tribal Gaming Ordinance, the Tribal Gaming Commission shall promptly issue to Developer any and all tribal gaming licenses required pursuant to the Tribal Gaming Ordinance, IGRA or other applicable federal law and any Compact. The Tribal Gaming Commission shall not unreasonably withdraw or refuse to renew any tribal license required in connection with the Facility. Any tribal fees for licenses or work permits imposed on Developer or any person connected with Developer shall not exceed the actual costs of background investigations and processing, including, without limitation, payments to third parties for services rendered in connection therewith.



**ARTICLE 13**  
**CONDITIONS TO DEVELOPER'S OBLIGATIONS**

The obligation of Developer to lease the Structure and Equipment as set forth in this Agreement shall be subject to, among other things, the following conditions precedent, unless Developer shall have, in each instance, waived such requirement in writing:

Section 13.1 Developer and any Affiliates, officers, shareholders, directors, employees or others connected therewith, as may be required by Applicable Law, shall have applied for and been granted a license or other permission as may be required from the Tribal Gaming Commission, and any other Governmental Authority whose license or permission is required by Applicable Law, approving Developer's participation in the development and operation of the Facility in the manner contemplated in the Transaction Documents. Developer agrees to promptly apply for such licenses and permissions as soon as practicable following the Execution Date, shall cooperate fully with and expeditiously reply to all requests of any such Governmental Authority to provide any information required to approve such licensing or other approval, and shall use commercially reasonable effort, to receive such approval within ninety (90) days of such application. Thereafter, Developer and any Affiliates, officers, shareholders, directors, employees or others connected therewith, as required by Applicable Law, shall maintain such licenses in good standing. Developer shall bear all of its own costs and attorneys fees associated with obtaining such licenses and permissions. Developer warrants and represents that it knows of no information that would reasonably be expected to prevent it from obtaining such licenses or approvals. The failure to obtain such licenses or approvals in the time specified shall be cause, at Developer's or the Tribe's discretion, to terminate this Lease and the other Transaction Documents, provided, however, that if Developer is diligently pursuing such licenses or approvals, the Tribe shall not have the right to terminate this Lease or any of the other Transaction Documents.

Section 13.2 All of the Transaction Documents, including the Exhibits to be attached thereto, shall have been fully completed and executed and delivered by any and all parties to such Transaction Documents.

Section 13.3 Developer shall have received verification in form and substance satisfactory to it in its sole and absolute discretion, that the NIGC does not consider the Transaction Documents, either collectively or individually, to constitute a management contract as defined under IGRA, 25 U.S.C. Section 2711, and the Tribe warrants and represents to Developer that the Tribe shall seek such approval from the NIGC immediately after the Execution Date.

Section 13.4 Developer shall have received:

- A. A copy of the Tribe's Constitution;
- B. A copy of the ordinances and/or resolutions of the Tribe authorizing the execution, delivery and performance of the Lease, and providing a limited waiver of its sovereign immunity to the extent required hereby, and providing that all notice and other procedures in connection with the adoption of such ordinances were complied with;

C. Certificates of the Tribe as to organizational matters in form and substance acceptable to Developer;

D. Copies of all tribal laws relating in any way to (i) any of the transactions contemplated in any of the Transaction Documents, (ii) acquisition, use and development of the Trust Lands, (iii) the operation or taxation of any business, including, without limitation, the Facility, on land within the jurisdiction of the Tribe, or (iv) the enforceability of the waiver of sovereign immunity contained herein;

E. Certificate of an officer of the Tribe confirming the representations and warranties set forth herein;

F. Certificates of insurance and insurance endorsements covering the full replacement value of the Structure and Equipment; and

G. Collateral schedules, security interest subordination agreements, searches, releases and termination statements which Developer may request to assure and confirm the creation of the bailment under this Lease, and the perfection of Developer's title to the Structure and the Equipment under this Lease.

Section 13.5 Developer shall have received approval of the Transaction Documents, to the extent required by Applicable Law, including, without limitation, 25 U.S.C. §81, as amended, from the BIA; provided, however, that written certification from the BIA that no such approval is required for the Transaction Documents shall satisfy this condition precedent. Notwithstanding the generality of the foregoing, Developer shall have the right to waive satisfaction of this condition.

Section 13.6 Developer shall have received state and federal tax lien, bankruptcy, and judgment searches with respect to the Tribe and the Trust Lands, duly certified to a current date by the appropriate filing officer, from Secretary of State of California and the BIA, which searches, if not disapproved by Developer within ten (10) days after the Effective Date, shall be deemed approved.

#### ARTICLE 14 REPRESENTATIONS AND WARRANTIES

Section 14.1 Representations and Warranties of The Tribe. The Tribe hereby warrants, represents and certifies to and for the benefit of Developer as follows, which warranties, representations, and certifications shall be conditions to Developer's responsibilities hereunder, shall survive the termination of this Lease, and shall continue during all times when any portion of any of the Transaction Documents remains effective:

A. The Tribe has the full power, authority and authorization to execute, enter into, and deliver the Transaction Documents to which it is a party and to perform the obligations it has assumed hereunder and thereunder.



B. The Tribe shall take all reasonable steps required to become authorized and to conduct Class II and/or Class III Gaming on the Trust Lands in the manner and in the places anticipated in this Lease, and to perform the obligations it has assumed under this Lease.

C. The execution, delivery and performance of the Transaction Documents by the Tribe will not violate any law of the Tribe or any law, rule, regulation or court order applicable to the Tribe, or, upon receipt of approval or permission, as appropriate, result in the breach of or constitute a default under any indenture or loan, credit or other agreement or instrument to which the Tribe is a party or by which it or its assets may be bound or affected or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of its properties or assets contrary to the terms of any such instrument or agreement.

D. The Transaction Documents (including, without limitation, the waivers of sovereign immunity contained therein) have been duly authorized, executed and delivered by the Tribe, and constitute legal, valid and binding obligations of the Tribe, enforceable in accordance with the terms thereof except as may be limited by bankruptcy or other laws.

E. Any resolution of the Tribe approving and authorizing the execution of the Transaction Documents was duly adopted at a duly called and convened meeting of the Tribal Council at which a quorum was present, and has not been repealed, modified or amended since its adoption. All necessary resolutions or other Tribal actions have been taken, and such actions are not subject to any reverse referendum or similar requirement or provision.

F. There are no judgments filed or suits, actions, or proceedings pending, or to the knowledge of the Tribe, threatened against or affecting the Tribe or the Trust Lands or by any court, arbitrator, administrative agency, or other Governmental Authority which, if adversely determined, would materially and adversely affect the construction, development, or operation of the Facility as contemplated in the Transaction Documents.

G. The Tribe has the right to operate the Facility;

H. The Trust Lands and the Facility, and the intended use thereof for the purpose and in the manner contemplated by this Lease and the Transaction Documents, or any other document related hereto or thereto, are permitted by and will comply in all material respects with all governmental use requirements applicable to the Trust Lands, the Facility and the Tribe, at the time the Tribe intends to use the Trust Lands and the Facility for the purposes described herein.

I. The most recent financial statements furnished to Developer by the Tribe fairly present the financial condition of the Tribe at and as of the date thereof, and, as of said date, there were no material liabilities of the Tribe, direct or indirect, fixed or contingent, that were not reflected in such financial statements or the notes thereto.

J. To the best of its knowledge, the Tribe has filed all federal and state tax returns and reports required to be filed, which returns properly reflect the taxes owed for the period covered thereby, and except for taxes being contested in good faith by appropriate proceedings, the Tribe has paid or made appropriate provisions for the payment of all taxes

which may become due pursuant to said returns and for the payment of all present installments of any assessments, fees and other governmental charges upon the Tribe.

K. No consent, approval or authorization of or permit or license from or registration with or notice to any federal or state regulatory authority, the BIA or any third party is required in connection with the making or performance of the Transaction Documents or any document or instrument related hereto or thereto; or, if so required, such consent, approval, authorization, permit or license has been requested and/or obtained, or will be requested within five (5) Business Days of the Execution Date, or such registration has been made or notice has been given or such other appropriate action has been taken on or prior to the date of such making or performance.

L. The Tribe is not in default of a material provision under any agreement, instrument, decree or order to which it is a party which, if breached by the Tribe, would materially impair the Tribe's ability to fulfill its obligations under this Lease or any agreement to which the Tribe, the Trust Lands, or the Facility are bound or affected.

M. The conduct and operation of the Facility by the Tribe is not subject to registration with, notification to, or regulation, licensing, franchising, consent or approval by any Governmental Authority or administrative agency, except as required by (i) general laws and regulations that are not related or applicable particularly or uniquely to the type of business conducted by the Tribe, that do not materially restrict or limit the business of the Tribe, and with which the Tribe is in substantial compliance and (ii) IGRA and laws and regulations promulgated by or associated with the BIA, the NIGC or any other federal law or agency with jurisdiction over gaming activities to be conducted on the Trust Lands, all of which have been obtained or will be applied for in accordance with the terms hereof, and, if applicable, (iii) tribal/state compact with the State of California.

N. There are no material, non-gaming claims or governmental proceedings pending or threatened against the Tribe.

O. The Property shall be managed and controlled in compliance with applicable provisions of any Tribal specific or general plan and all Tribal zoning, subdivision, environmental and health and safety rules, regulations, ordinances, directives and statutes applicable to the such Lands, its occupancy or use; all Tribal restrictive covenants, zoning and subdivision ordinances and building laws and other applicable governmental laws, ordinances and lawful requirements, if any, applicable to such Lands shall be complied with in all material respects; and the Tribe shall ensure that every order, notice, complaint, report, or warning from any Governmental Authority that may be received by or communicated to the Tribe, its respective agents, assigns, tenants, subcontractors, or any other Person acting for the Tribe, regarding the Property, its occupancy or use will be promptly communicated and delivered to Developer.

P. As used herein, "Regulated Substance" means any substance, material, or matter (including, without limitation, medical waste, asbestos, oil, petroleum or chemical liquids or solids, liquids or gaseous products) that may give rise to liability under any Environmental Laws (as defined herein). As used hereinafter, "Environmental Laws" means (i) any local, state or federal laws, rules, ordinances or regulations either in existence as of the date hereof, or





any nature upon any of its properties or assets contrary to the terms of any such instrument or agreement.

D. There are no judgments filed or suits, actions or proceedings pending, or to the knowledge of Developer threatened against or affecting Developer by any Court, arbitrator, administrative agency or other Governmental Authority which, if adversely determined, would materially and adversely affect the construction, development or operation of the Facility as contemplated in the Transaction Documents.

E. To the best of its knowledge, Developer has filed all federal and state tax returns and reports required to be filed, which returns properly reflect the taxes owed for the period covered thereby, and except for taxes being contested in good faith by appropriate proceedings, Developer has paid or made appropriate provisions for the payment of all taxes that may become due pursuant to said returns and for the payment of all present installments of any assessments, fees and other governmental charges upon Developer.

F. Developer is not in default of a material provision under any agreement, instrument, decree or order to which it is a party which, if breached by Developer, would materially impair Developer's ability to fulfill its obligations under this Lease.

G. Developer will obtain all necessary and appropriate state, federal, local, tribal, and private clearances, authorizations, permits and licenses with respect to the construction of the Facility.

H. Developer has the full power, authority and authorization to execute, enter into, and deliver the Transaction Documents to which it is a party and to perform the obligations it has assumed hereunder and thereunder.

I. The Transaction Documents have been duly authorized, executed and delivered by Developer, and constitute legal, valid and binding obligations of Developer, enforceable in accordance with the terms thereof except as may be limited by bankruptcy or other laws.

J. Any resolution of Developer approving and authorizing the execution of the Transaction Documents was duly adopted at a meeting of the Board of Directors at a duly called and convened meeting at which a quorum was present, and has not been repealed, modified or amended since its adoption. All necessary resolutions or other actions have been taken, and such actions are not subject to any reverse referendum or similar requirement or provision.

K. There are no judgments filed or suits, actions, or proceedings pending, or to the knowledge of Developer, threatened against or affecting Developer or the Trust Lands or by any court, arbitrator, administrative agency, or other Governmental Authority which, if adversely determined, would materially and adversely affect the construction, development, or operation of the Facility as contemplated in the Transaction Documents.

L. Developer's activities at the Property, and the intended use thereof for the purpose and in the manner contemplated by this Lease and the Transaction Documents, or any



B. The Tribe shall take all reasonable steps required to become authorized and to conduct Class II and/or Class III Gaming on the Trust Lands in the manner and in the places anticipated in this Lease, and to perform the obligations it has assumed under this Lease.

C. The execution, delivery and performance of the Transaction Documents by the Tribe will not violate any law of the Tribe or any law, rule, regulation or court order applicable to the Tribe, or, upon receipt of approval or permission, as appropriate, result in the breach of or constitute a default under any indenture or loan, credit or other agreement or instrument to which the Tribe is a party or by which it or its assets may be bound or affected or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of its properties or assets contrary to the terms of any such instrument or agreement.

D. The Transaction Documents (including, without limitation, the waivers of sovereign immunity contained therein) have been duly authorized, executed and delivered by the Tribe, and constitute legal, valid and binding obligations of the Tribe, enforceable in accordance with the terms thereof except as may be limited by bankruptcy or other laws.

E. Any resolution of the Tribe approving and authorizing the execution of the Transaction Documents was duly adopted at a duly called and convened meeting of the Tribal Council at which a quorum was present, and has not been repealed, modified or amended since its adoption. All necessary resolutions or other Tribal actions have been taken, and such actions are not subject to any reverse referendum or similar requirement or provision.

F. There are no judgments filed or suits, actions, or proceedings pending, or to the knowledge of the Tribe, threatened against or affecting the Tribe or the Trust Lands or by any court, arbitrator, administrative agency, or other Governmental Authority which, if adversely determined, would materially and adversely affect the construction, development, or operation of the Facility as contemplated in the Transaction Documents.

G. The Tribe has the right to operate the Facility;

H. The Trust Lands and the Facility, and the intended use thereof for the purpose and in the manner contemplated by this Lease and the Transaction Documents, or any other document related hereto or thereto, are permitted by and will comply in all material respects with all governmental use requirements applicable to the Trust Lands, the Facility and the Tribe, at the time the Tribe intends to use the Trust Lands and the Facility for the purposes described herein.

I. The most recent financial statements furnished to Developer by the Tribe fairly present the financial condition of the Tribe at and as of the date thereof, and, as of said date, there were no material liabilities of the Tribe, direct or indirect, fixed or contingent, that were not reflected in such financial statements or the notes thereto.

J. To the best of its knowledge, the Tribe has filed all federal and state tax returns and reports required to be filed, which returns properly reflect the taxes owed for the period covered thereby, and except for taxes being contested in good faith by appropriate proceedings, the Tribe has paid or made appropriate provisions for the payment of all taxes

which may become due pursuant to said returns and for the payment of all present instalments of any assessments, fees and other governmental charges upon the Tribe.

K. No consent, approval or authorization of or permit or license from or registration with or notice to any federal or state regulatory authority, the BIA or any third party is required in connection with the making or performance of the Transaction Documents or any document or instrument related hereto or thereto; or, if so required, such consent, approval, authorization, permit or license has been requested and/or obtained, or will be requested within five (5) Business Days of the Execution Date, or such registration has been made or notice has been given or such other appropriate action has been taken on or prior to the date of such making or performance.

L. The Tribe is not in default of a material provision under any agreement, instrument, decree or order to which it is a party which, if breached by the Tribe, would materially impair the Tribe's ability to fulfill its obligations under this Lease or any agreement to which the Tribe, the Trust Lands, or the Facility are bound or affected.

M. The conduct and operation of the Facility by the Tribe is not subject to registration with, notification to, or regulation, licensing, franchising, consent or approval by any Governmental Authority or administrative agency, except as required by (i) general laws and regulations that are not related or applicable particularly or uniquely to the type of business conducted by the Tribe, that do not materially restrict or limit the business of the Tribe, and with which the Tribe is in substantial compliance and (ii) IGRA and laws and regulations promulgated by or associated with the BIA, the NIGC or any other federal law or agency with jurisdiction over gaming activities to be conducted on the Trust Lands, all of which have been obtained or will be applied for in accordance with the terms hereof, and, if applicable, (iii) tribal/state compact with the State of California.

N. There are no material, non-gaming claims or governmental proceedings pending or threatened against the Tribe.

O. The Property shall be managed and controlled in compliance with applicable provisions of any Tribal specific or general plan and all Tribal zoning, subdivision, environmental and health and safety rules, regulations, ordinances, directives and statutes applicable to the such Lands, its occupancy or use; all Tribal restrictive covenants, zoning and subdivision ordinances and building laws and other applicable governmental laws, ordinances and lawful requirements, if any, applicable to such Lands shall be complied with in all material respects; and the Tribe shall ensure that every order, notice, complaint, report, or warning from any Governmental Authority that may be received by or communicated to the Tribe, its respective agents, assigns, tenants, subcontractors, or any other Person acting for the Tribe, regarding the Property, its occupancy or use will be promptly communicated and delivered to Developer.

P. As used herein, "Regulated Substance" means any substance, material, or matter (including, without limitation, medical waste, asbestos, oil, petroleum or chemical liquids or solids, liquids or gaseous products) that may give rise to liability under any Environmental Laws (as defined herein). As used hereinafter, "Environmental Laws" means (i) any local, state or federal laws, rules, ordinances or regulations either in existence as of the date hereof, or



enacted or promulgated after the date of this Lease, that concern the existence, management, control, discharge, treatment, containment, and/or removal of substances or materials that are or may become a threat to public health or the environment; or (ii) any common law theory based on nuisance, trespass, negligence, strict liability, aiding and abetting, or other tortious conduct. Compliance by the Tribe pursuant to this provision with Environmental Laws, as defined herein, shall not be construed as a waiver of the Tribe's sovereign immunity to the application of state or local environmental regulations or laws to tribal lands.

1. To the best of the Tribe's knowledge without investigation or inquiry, there has been no deposit, storage, seepage or filtration of any Regulated Substances at, upon, under or within the Trust Lands or any contiguous real estate. To the best of the Tribe's knowledge without investigation or inquiry, the Tribe has not caused or permitted to occur, and shall not permit to exist, any condition that may cause a discharge of any Regulated Substances at, upon, under or within the Trust Lands.

2. The Tribe shall comply strictly and in all respects with the requirements of the Environmental Laws and regulations applicable to the Trust Lands, and shall notify Developer immediately in the event of any discharge or discovery of any Regulated Substance at, upon, under or within the Trust Lands of which Developer has notice. The Tribe shall promptly forward to Developer copies of all orders, notices, permits, applications or other communications and reports of which Developer has notice in connection with any discharge or the presence of any Regulated Substance or any other matters relating to the Environmental Laws or any similar laws or regulations, as they may affect the Trust Lands or the Facility.

Section 14.2. Representations and Warranties of Developer. Developer hereby warrants, represents and certifies to and for the benefit of the Tribe as follows, which warranties, representations, and certifications shall be conditions to the Tribe's responsibilities hereunder, shall survive the termination of this Lease, and shall continue during all times when any portion of any of the Transaction Documents remains effective:

A. Developer is a corporation duly organized, validly existing and in good standing under the laws of the State of Missouri, and is (or prior to the performance of the obligations it has assumed hereunder shall be) licensed, to conduct business in the State of California as contemplated herein, and has applied for, and, except as otherwise provided herein, shall obtain such licenses and background investigation approvals as may be required by Applicable Law.

B. The execution, delivery and performance of the Transaction Documents by Developer have been duly authorized by Developer, and such documents are valid and binding obligations of Developer in accordance with their terms thereof, except as such enforcement may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights.

C. The execution, delivery and performance of the Transaction Documents by Developer will not violate any law, rule, regulation or court order applicable to Developer, or result in the breach of or constitute a default under any indenture or loan, credit or other agreement or instrument to which Developer is a party or by which they or their assets may be bound or affected or result in the creation or imposition of any lien, charge or encumbrance of

any nature upon any of its properties or assets contrary to the terms of any such instrument or agreement.

D. There are no judgments filed or suits, actions or proceedings pending, or to the knowledge of Developer threatened against or affecting Developer by any Court, arbitrator, administrative agency or other Governmental Authority which, if adversely determined, would materially and adversely affect the construction, development or operation of the Facility as contemplated in the Transaction Documents.

E. To the best of its knowledge, Developer has filed all federal and state tax returns and reports required to be filed, which returns properly reflect the taxes owed for the period covered thereby, and except for taxes being contested in good faith by appropriate proceedings, Developer has paid or made appropriate provisions for the payment of all taxes that may become due pursuant to said returns and for the payment of all present installments of any assessments, fees and other governmental charges upon Developer.

F. Developer is not in default of a material provision under any agreement, instrument, decree or order to which it is a party which, if breached by Developer, would materially impair Developer's ability to fulfill its obligations under this Lease.

G. Developer will obtain all necessary and appropriate state, federal, local, tribal, and private clearances, authorizations, permits and licenses with respect to the construction of the Facility.

H. Developer has the full power, authority and authorization to execute, enter into, and deliver the Transaction Documents to which it is a party and to perform the obligations it has assumed hereunder and thereunder.

I. The Transaction Documents have been duly authorized, executed and delivered by Developer, and constitute legal, valid and binding obligations of Developer, enforceable in accordance with the terms thereof except as may be limited by bankruptcy or other laws.

J. Any resolution of Developer approving and authorizing the execution of the Transaction Documents was duly adopted at a meeting of the Board of Directors at a duly called and convened meeting at which a quorum was present, and has not been repealed, modified or amended since its adoption. All necessary resolutions or other actions have been taken, and such actions are not subject to any reverse referendum or similar requirement or provision.

K. There are no judgments filed or suits, actions, or proceedings pending, or to the knowledge of Developer, threatened against or affecting Developer or the Trust Lands or by any court, arbitrator, administrative agency, or other Governmental Authority which, if adversely determined, would materially and adversely affect the construction, development, or operation of the Facility as contemplated in the Transaction Documents.

L. Developer's activities at the Property, and the intended use thereof for the purpose and in the manner contemplated by this Lease and the Transaction Documents, or any



other document related hereto or thereto, are permitted by and will comply in all material respects with all governmental use requirements applicable to the Trust Lands, the Facility, and the Structure.

M. There are no material, non-gaming claims or governmental proceedings pending or threatened against Developer.

N. Developer's activities at the Property shall be in compliance with applicable provisions of any Tribal specific or general plan and all Tribal zoning, subdivision, environmental and health and safety rules, regulations, ordinances, directives and statutes applicable to the such lands, its occupancy or use, all Tribal restrictive covenants, zoning and subdivision ordinances and building laws and other applicable governmental laws, ordinances and lawful requirements, if any, applicable to the such lands shall complied with in all material respects; and every order, notice, complaint, report, or warning from any Governmental Authority is received by or communicated to Developer, its respective agents, assigns, tenants, subcontractors, or any other Person acting for Developer, regarding the Property, its occupancy or use shall be promptly communicated and delivered to the Tribe.

O. To the best of Developer's knowledge without investigation or inquiry, there has been no deposit, storage, seepage or filtration of any Regulated Substances at, upon, under or within the Trust Lands or any contiguous real estate. To the best of Developer's knowledge without investigation or inquiry, Developer has not caused or permitted to occur, and shall not permit to exist, any condition that may cause a discharge of any Regulated Substances at, upon, under or within the Trust Lands.

P. Developer shall comply strictly and in all respects with the requirements of the Environmental Laws and regulations applicable to the Trust Lands, and shall notify the Tribe immediately in the event of any discharge or discovery of any Regulated Substance at, upon, under or within the Trust Lands of which Lessor has notice. Developer shall promptly forward to the Tribe copies of all orders, notices, permits, applications or other communications and reports of which Lessor has notice in connection with any discharge or the presence of any Regulated Substance or any other matters relating to the Environmental Laws or any similar laws or regulations, as they may affect the Trust Lands or the Facility.

Section 14.3 Affirmative Covenants. In addition to the covenants and agreements of the Tribe set forth and contained in the other Transaction Documents, the Tribe hereby covenants and agrees that, during the Term of each of the Transaction Documents, and so long as any obligation of the Tribe to Developer pursuant to the Transaction Documents remains due under the terms hereof, the Tribe will:

A. Act in accordance with the terms hereof;

B. Pay all applicable taxes (including payroll and withholding taxes), assessments and governmental charges prior to the time when any penalties or interest accrue, unless contested in good faith by appropriate proceedings in accordance with the terms and provisions hereof;

C. Continue the operation of the Facility to the extent that it is legally permissible and economically feasible to do so; maintain all rights, licenses, and franchises necessary for the operation of the Facility; and comply with all Applicable Laws pertaining to the Facility, including but not limited to IGRA;

D. Maintain property, liability, business interruption (to the extent deemed necessary by Developer, and reserving The Tribe's right to self-insure or participate in a self-insurance pool) and other forms of insurance in commercially reasonable amounts naming Developer as an additional insured and a loss payee, with thirty (30) day cancellation notices to go to Developer;

E. Furnish to Developer as soon as possible and in any event within five (5) Business Days after the Tribe has obtained actual knowledge of the occurrence of Event of Default or any event that with the passage of time or the giving of notice or both would constitute an Event of Default, a statement signed by the Tribe setting forth details of such event and the action which the Tribe has taken, is taking, or proposes to take to correct the same;

F. Promptly give notice in writing to the other of any and all material litigation involving or related to the Trust Lands or the Facility if the amount in dispute exceeds \$50,000 or is not covered by insurance, or which otherwise may have an adverse material impact on the Facility's or the Tribe's ability to pay amounts due under this Lease or any of the Transaction Documents or perform the obligations it has agreed to perform hereunder and thereunder;

G. Comply with the requirements of all Applicable Laws, rules, regulations and orders of any Governmental Authority a breach of which would materially and adversely affect the Facility or the Tribe's ability to pay amounts due under this Lease or any of the Transaction Documents, or perform the obligations it has agreed to perform hereunder and thereunder; except where diligently contested in good faith and by proper proceedings;

H. Obtain all necessary and appropriate federal and tribal permits and approvals necessary with respect to the enforceability of the Transaction Documents or the operation of the Facility;

I. Preserve all of the rights, privileges and franchises necessary or desirable in the normal conduct of operating the business of the Facility; conduct the business of the Facility in an orderly, efficient and regular manner; and not liquidate, merge, dissolve, suspend business operations or assign, encumber, lease, transfer, encumber or sell the Facility, the Structure or any of the Equipment, or any portion thereof or all or substantially all of its assets without the prior written consent of Developer, which consent shall not be unreasonably withheld;

J. Keep all of the assets and properties necessary to its business conducted at the Facility, including, without limitation, the Structure and the Equipment, in good working order and condition, ordinary wear and tear excepted;

K. At all times keep proper books of record and accounts for the Facility in accordance with GAAP, and, upon one (1) days notice by Developer, provide any duly



authorized representative of Developer access during normal business hours to, and permit such representative to reasonably examine, copy or make extracts from, any and all books, records and documents in the Tribe's possession or control relating to the Facility or the Trust Lands; and

L. Authorize, and cause and direct the Facility, on behalf and in the name of the Tribe, to deposit the Pledged Revenues with the Depository on a daily basis pursuant to and in strict accordance with the terms and provisions of the Cash Management Agreement, which authorization shall not be revoked, canceled, terminated, restricted, limited or altered in any way without the prior written consent of Developer, which consent shall not be unreasonably withheld.

Section 14.4 Operating Policies. In connection with the operation of the Facility, the Tribe shall develop, adopt and adhere to operating policies and procedures that reflect sound and reasonable business judgment, and that are appropriate for the Facility and consistent with prevailing regional industry standards and practices.

Section 14.5 Budgets.

A. Operating Expense Budget. The Tribe shall prepare, on a monthly basis, an Operating Expense Budget for the Facility, which shall be consistent with all Applicable Laws, GAAP and prevailing regional industry standards and practices that reflect sound and reasonable business judgment. The Operating Expense Budget shall include, among other things, the amount of money the Tribe anticipates withholding from the Pledged Revenues on a daily basis for the Daily Cash Requirements. Copies of the Operating Expense Budget shall be delivered to both Developer and the Depository no later than the twentieth (20) day of the month preceding the month for which the Operating Expense Budget is prepared.

B. Capital Reserve Budget. The Tribe shall prepare, on an annual basis, a Capital Reserve Budget for the Facility, which shall be consistent with all Applicable Laws, GAAP and prevailing regional industry standards and practices that reflect sound and reasonable business judgment. The Capital Reserve Budget shall include, among other things, a list of all anticipated capital asset acquisitions and all anticipated capital improvements, together with a schedule of monthly deposits that the Tribe anticipates making into the Capital Reserve Account pursuant to and in accordance with the terms and provisions of the Cash Management Agreement. Copies of the annual Capital Reserve Budget shall be delivered to both Developer and the Depository no later than December 1 of the year preceding the year for which the Capital Reserve Budget is prepared.

Section 14.6 Replacement Equipment. To ensure the continuing financial viability of the Facility, the Tribe has a continuing obligation to replace the Equipment on a schedule, consistent with prevailing regional industry standards and practices which reflects sound and reasonable business judgment, as determined by the Tribe. Consistent with the schedule for Equipment replacement provided for under this Section, the Tribe, within ninety (90) days of a scheduled Equipment replacement, shall provide Developer with written notice of the scheduled Equipment replacement.

A. If The Tribe elects to lease the replacement Equipment acquired pursuant to Section 14.6, then any and all payments, however designated, due Developer under any lease, contract, agreement or instrument relating to such replacement Equipment shall be considered Operating Expenses, and paid as such pursuant to and in accordance with the terms and provisions of the Cash Management Agreement, provided, however, that if, on the Delivery Date there is an unpaid balance of Base Rent due under this Lease, any and all payments, however designated, due Developer under any lease, contract, agreement or instrument relating to such replacement Equipment in the Facility shall be subordinate to the payment of Base Rent hereunder.

B. If the Tribe elects to purchase the replacement Equipment acquired pursuant to this Section, the purchase price of such replacement Equipment shall be paid, in full, by the Tribe out of the Capital Reserve Account pursuant to and in accordance with the terms and provisions of the Cash Management Agreement, and no portion of the purchase price of such replacement Equipment shall be paid out of, nor charged against any other account established pursuant to the Cash Management Agreement. Upon the Tribe's acceptance of delivery of any replacement Equipment purchased pursuant to this Section, the Tribe shall grant Developer a security interest, subordinate to any purchase money security interests, in such replacement Equipment to secure the Tribe's performance of its obligations hereunder and under the Transaction Documents, and the Tribe shall execute such documents as Developer shall reasonably request to perfect the security interest granted.

C. Nothing contained herein is intended or shall be interpreted as relieving the Tribe of its obligations to make Base Rent and Incentive Rent payments due hereunder for the entire Lease Term, and the Tribe's acquisition and use of replacement Equipment will in no way reduce, alter or amend its obligation to Developer to pay Base Rent or Incentive Rent due Developer hereunder for the entire Lease Term, as applicable.

#### Section 14.7 Financial Statements and Audits.

A. The Tribe shall deliver to Developer as soon as practicable and in any event within twenty (20) days after the end of each month, a statement of Gross Revenue and Net Revenue for the preceding month, all in reasonable detail and certified by the chief executive or financial officer of the Tribe to have been prepared in accordance with GAAP and this Lease.

B. The Tribe shall deliver to Developer an accounts receivable report and an accounts payable aging report of the Facility at such times as Developer reasonably may from time to time request, not to exceed four requests per calendar year.

C. The Tribe shall deliver to Developer all reports required by Applicable Law and applicable regulations promulgated thereunder, submitted to or received from any federal, state or Tribal gaming authorities within thirty (30) days of receipt thereof, to the extent that such reports pertain to either the Tribe's ability to make payments to Developer under this Lease or otherwise perform its obligations under the Transaction Documents, provided, however, that any such reports that, as a matter of law, are exempt, in whole or in part, from public disclosure, shall be provided to Developer with Developer's agreement to keep such information confidential to the extent provided by law.



D. The Tribe shall deliver to Developer as soon as is practicable and in any event within ninety (90) days after the close of each fiscal year, (i) an audited balance sheet of the Facility, (ii) an audited statement of income of the Facility, and (iii) an audited statement of cash flows of the Facility, as at the end of and for the fiscal year just closed, setting forth in comparative form the corresponding figures for the preceding Fiscal Year all in reasonable detail and certified (subject only to reasonable and appropriate qualification or exception) by independent, nationally recognized public accountants; and concurrently with such financial statements, a written statement signed by such independent accountants to the effect that, in making the examination necessary for their certification of such financial statements, they have not obtained any knowledge of the existence of any Event of Default or potential Event of Default, or, if such independent accountants shall have obtained from such examination any such knowledge, they shall disclose in such written statement the Event of Default or potential Event of Default and the nature thereof, it being understood that such independent accountants shall be under no liability, directly, or indirectly, to anyone for failure to obtain knowledge of any such Event of Default or potential Event of Default, and setting forth calculations of such auditors as to the compliance by the Tribe with all the covenants contained herein (including, without limitation, calculations of Gross Revenues and Net Revenues).

E. Audits. The Tribe shall cause to be performed on a timely basis, and delivered to Developer within thirty (30) days of completion and receipt by the Tribe thereof, all audits of the Facility which must be performed in accordance with Applicable Law. Such reports shall include at a minimum an annual audit performed by a nationally recognized independent public accounting firm in accordance with GAAP, as applied to casinos, and sufficient to meet NIGC auditing requirements.

F. Government Reports. The Tribe shall deliver to Developer all reports to or from any Governmental Authority that deal with the Tribe's ability make the Base Rent payments due hereunder or to perform the obligations the Tribe has assumed hereunder or under the other Transaction Documents.

Section 14.3 Negative Covenants. In addition to the covenants and agreements of the Tribe set forth and contained in the other Transaction Documents and herein, the Tribe hereby covenants and agrees to and with Developer that, so long as there is Base Rent payable hereunder, or the Tribe's other obligations hereunder, or under any of the other Transaction Documents remain outstanding, the Tribe will not, except with the prior written consent of Developer (which consent, or the denial thereof, shall not be unreasonably withheld):

A. Indebtedness. Incur any debt related to or in connection with the operation of the Facility other than (i) the Transaction Documents, (ii) trade payables of the Facility incurred in the ordinary course of business, and (iii) purchase money financing not in excess of \$500,000 at any one time outstanding.

B. Sale or Disposition. Sell, dispose of, lease, assign, sublet, transfer, mortgage or encumber (whether voluntarily or by operation of law) all or any part of its right, title, or interest in or to the Trust Lands, the Facility, or the Equipment.

C. Alteration of the Facility. Materially alter the nature of the Facility, the business thereof, or the Structure.

D. Excessive Compensation. Pay as Operating Expenses salaries, bonuses, commissions, consultant fees, or other commissions to employees, agents, contractors, or Vendors of the Facility which are substantially in excess of prevailing regional gaming industry standards for such expenditures. Any such excessive compensation shall be deemed to not be an Operating Expense of the Facility and shall be paid solely out of the Tribe's share of Net Revenue.

E. Material Breach. Cause or permit any material breach, default or event of default to occur under any of the other Transaction Documents or this Lease which breach or default is not cured within the applicable cure provisions thereof.

F. Distributions. Cause, authorize or permit the distribution or payment of any portion of the Pledged Revenues except as set forth and in conformity with the terms and provisions of the Cash Management Agreement, or cause, authorize or permit any revocation, cancellation, termination, restriction, limitation, alteration or modification of the Cash Management Agreement or the obligations of the Tribe with respect to the Facility thereunder, without the prior written consent of Developer, which consent shall be within the sole and absolute discretion of Developer.

G. Restrictions on Competing Facilities. Without the prior written consent of Developer, which consent shall be within the sole and absolute discretion of Developer, the Tribe shall neither establish or conduct, nor license or permit the establishment or conduct of Gaming on the Trust Lands or within San Bernardino County, California, except for Gaming contemplated by and performed in accordance with the terms of this Lease. Developer shall not develop or finance any gaming facility within San Bernardino County, California, except for the Facility contemplated by this Lease.

#### ARTICLE 15 EVENTS OF DEFAULT

Section 15.1 Events of Default. Each of the following occurrences shall constitute an Event of Default under this Lease and each of the other Transaction Documents (any such event, an "Event of Default"):

A. Any material representation or warranty made by or on behalf of the Tribe or in any report, certificate or other document furnished by or on behalf of the Tribe pursuant to this Lease shall prove to be false or misleading in any material respect when made.

B. Failure of the Tribe to (i) make any payment of Base Rent or Incentive Rent as the same may become due and payable pursuant to the terms hereof (subject to any applicable cure period), provided, however, the Tribe's failure to make any payment of Base Rent as the same becomes due and payable because of insufficient revenue from the Facility shall not be deemed an event of default hereunder, and the Tribe shall pay any unpaid Base Rent as soon as revenue from the Facility shall permit and no distributions or payments shall be made