APR 19 1996

SECOND AMENDED MANAGEMENT AGREEMENT FOR THE CONDUCT OF CLASS II GAMING ON THE KICKAPOO VILLAGE INDIAN RESERVATION

THIS AGREEMENT is made and entered into this 19 day of APRIL, 1996, by and between the **KICKAPOO TRADITIONAL TRIBE OF TEXAS**, a federally recognized Indian Tribe organized pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 987), by and through its duly elected Traditional Council, (hereinafter referred to as "Tribe") and **SOUTHWEST CASINO AND HOTEL CORP.**, a Minnesota corporation with its principal place of business located in Minneapolis, Minnesota (hereinafter referred to as "Manager") and completely supersedes and replaces the original Agreement between the parties, dated January 25,1994.

WITNESSETH

ARTICLE I
DEFINITIONS

As used in this Agreement, the following terms shall have the respective meanings ascribed thereto unless the context clearly indicates otherwise.

1.1 "The Act" shall mean the Indian Gaming Regulatory Act, Pub. L. No. 100-497, codified at 25 U.S.C. Sections 2701-2721.

1.2 "Class I Gaming" shall have the meaning as set forth in the Act.

1.3 "Class II Gaming" shall have the meaning as set forth in the Act.

1.4 This Section intentionally deleted.

1.5 "Commission" shall mean the National Indian Gaming Commission.

1.6 This Section intentionally deleted.

1.7 "Contract for supplies, services or concessions in a contract amount in excess of or "gaming-supply contract" shall mean any agreement between the Gaming Operation and any person or entity for the provision of goods or services to the Gaming Operation in an amount that exceeds in any year. The term shall include multiple agreements between the Gaming Operation and any person or entity owned in whole or in part by another person or entity with which the Gaming Operation has another agreement for goods or services, when the aggregate amount of the agreements exceed n any year.

1.8 "CPA" or "Certified Public Accountant" shall mean a certified public accountant who is a member of an accounting firm of regional or national recognition.

1.9 "Gaming" shall mean the playing of Class II games of chance that are authorized to be conducted on tribal lands by the Act and other applicable federal or tribal laws.

1.10 "Gaming Enterprise" shall mean a commercial enterprise of the Tribe which includes the Gaming Operation and other ancillary activities, including, but not limited to, food service, and gift shop operations.

1.11 "Gaming Facility" or "Facility" shall mean the improvements constructed on tribal lands and the surrounding grounds on the Property at which Class II games of chance are conducted and includes any parking areas and drives used for ingress and egress to and connecting the "Facility" to city, county or state roads and highways.

1.12 "Gaming Operation" shall mean that economic activity owned by the Tribe which operates the games, receives the revenues, issues the prizes and pays the expenses associated with Class II gaming.

1.13 "Gaming-Related Operating Expense" shall mean those expenses, excluding management fees, calculated in accordance with generally accepted accounting principles (GAAP), attributable to the Gaming Operation and computed in accordance with Section 8.2, below.

1.14 "General Manager" shall mean the person selected by Manager and licensed by the Traditional Council who shall be responsible for managing the Gaming Enterprise as detailed elsewhere in this Agreement.

1.15 "Key Employee" shall mean (1) any person who performs one or more of the following functions:

(a) bingo caller;

(b) counting room supervisor;

(c) chief of security;

(d) custodian of gaming supplies or cash;

(e) floor manager;

(f) pit boss;

(g) dealer;

(h) croupier;

(i) approver of credit; or

(j) custodian of gambling devices, including persons with access to cash and accounting records with such devices; and,

if not otherwise included, (2) any person whose total cash compensation is in excess of $50,000 per year; or (3) the four highest compensated employees in the Gaming Operation.

1.16 "Loan" shalt mean that credit and advancement of funds contemplated in connection with Article IX below. "Loan Documents" shall mean those documents which evidence, describe and secure the loan.

1.17 "Management Agreement" shall mean this Agreement for the management of Class II games of chance on tribal lands.

1.18 "Manager" shall mean Southwest Casino and Hotel Corp.

1.19 "Net Revenues" shall mean gross revenues of the Gaming Operation less (a) amounts paid out as, or paid for, prizes; and (b) total Gaming-Related Operating Expenses, excluding management fees, as determined in accordance with Section 8.2, below.

1.20 "Non-Gaming Net Revenues" shall mean gross revenues from all nongaming sources, including without limitation, restaurant, food service and gift shop activities, less total non-gaming related operating expenses calculated in accordance with generally accepted accounting principles (GAAP).

1.21 "Principal" shall mean the directors of Southwest Casino and Hotel Corp., all stockholders of Southwest Casino and Hotel Corp. holding five percent or more of the stock of said corporation, and any person or entity with a direct or indirect financial interest in this Agreement.

1.22 "Project Approval" shall mean approval of this Agreement by the Commission and authorization for the Tribe and Manager to commence gaming operations on tribal lands by the Commission.

1.23 "Primary Management Official" shall mean (1) the General Manager and the Tribal Representative; (2) any person who has authority to hire and fire employees or to set up working policy for the Gaming Operation; and (3) the

chief financial officer or other person who has financial management responsibility for the Gaming Operation.

1.24 "Property" shall mean that parcel of land, more particularly described in Exhibit A, attached as a part hereof, on which the Traditional Council shall cause to be built the Gaming Facility, which parcel is held in trust for the Tribe by the United States.

1.25 "Start-up Expenses" shall mean all expenses necessary to prepare for the commencement of Gaming Operations, which expenses are not otherwise specified as Gaming-Related Operating Expenses.

1.26 "State" shall mean the State of Texas and its political subdivisions.

1.27 "Traditional Council" shall mean the governing body of the Tribe, elected pursuant to Art. V, Section 1 of the Constitution of the Kickapoo Traditional Tribe of Texas.

1.28 "Tribal Gaming Board" shall mean the Traditional Council or such body as the Traditional Council may establish by Ordinance to regulate the conduct of gaming on tribal lands.

1.29 "Tribal Land" or "tribal lands" shall mean (1) all land within the limits of the existing Kickapoo Village Indian Reservation; and (2) any real property in Maverick County, Texas, that is now held or which is hereafter acquired by the United States in trust for the Kickapoo Traditional Tribe of Texas and over which the Tribe and United States, as opposed to the State of Texas, exercise governmental power and on which Gaming is permitted by law; and (3) any land in Maverick County, Texas, hereafter acquired by the Tribe and held subject to restriction by the United States against alienation and on which Gaming is permitted by law.

1.30 "Tribal Representative" shall mean a person appointed by Resolution of the Traditional Council who shall perform the functions detailed elsewhere in this Agreement. In the absence of such person appointed by Resolution, a quorum of the Traditional Council shall constitute the "Tribal Representative".

1.31 "Tribe" shall mean the Kickapoo Traditional Tribe of Texas. Whenever the Tribe is accorded a right or responsibility under the terms of this Agreement, that right or responsibility shall be exercised by the Traditional Council or its authorized representative.

ARTICLE II
PURPOSE

The purpose of this Management Agreement is to memorialize the responsibilities and obligations of the Tribe and of Manager with respect to the conduct of Class II gaming on tribal lands.

ARTICLE III
GOVERNING AUTHORITY

3.1 **Compliance with Applicable Law.** All gaming activities conducted under the auspices of this Management Agreement shall be managed in accordance with the provisions of the Act, the Compact, and any applicable ordinance(s) of the Kickapoo Traditional Tribe of Texas, as appropriate.

3.2 This Section intentionally deleted.

ARTICLE IV
OWNERSHIP AND RELATIONSHIP OF PARTIES

Gaming Facility RG

4.1 **Ownership.** The Kickapoo Traditional Tribe of Texas shall have the sole proprietary interest in any Gaming Operation or Gaming Enterprise conducted on tribal lands.

4.2 **Relationship of the Parties.** The nature of the relationship between the Tribe and Manager is that of owner/independent contractor and it is expressly agreed that ownership of the Gaming Operation, its assets and its proceeds is vested in the Tribe. Manager, at all times, in its dealings with the Tribe under or in connection with this Agreement shall be held to the standards of a fiduciary exercising normal business judgment in the operation of an enterprise of this kind.

ARTICLE V
PARTIES' RESPONSIBILITIES

5.1 **Manager's Responsibilities.** Among other things, and as detailed elsewhere in this Management Agreement, the Manager shall be responsible for:

5.1.1 supervising and managing all activities necessary for the conduct of Class II gaming on tribal lands;

5.1.2 constructing, maintaining and improving the Gaming Facility, provided that any improvements shall be approved, in advance, by the Traditional Council;

5.1.3 providing operating capital for the house bank to the Gaming Operation up to the amount for Class II gaming or such other amount as may be reasonably necessary;

5.1.4 establishing, in consultation with the Tribal Gaming Board, the operating days and hours of the Gaming Operation;

5.1.5 hiring, firing, training and promoting employees of the Gaming Enterprise;

5.1.6 maintaining separate books and accounts for each component of the Gaming Enterprise;

5.1.7 preparing the financial statements and reports for each component of the Gaming Enterprise;

5.1.8 hiring and supervising personnel to provide security for the Gaming Operation;

5.1.9 setting the advertising budget and placing advertising for the Gaming Operation;

5.1.10 promptly paying the bills and expenses of the Gaming Enterprise with funds of the Gaming Enterprise;

5.1.11 establishing and administering employment practices of the Gaming Enterprise, including the development and enforcement of personnel policies and procedures, which shall conform to generally accepted personnel policies and procedures of the hospitality/gaming industry, subject to the proviso, as detailed elsewhere in this Management Agreement, that preference in employment shall be accorded to enrolled members of the Kickapoo Traditional Tribe of Texas;

5.1.12 obtaining and maintaining insurance coverage on the Gaming Enterprise, including liability and property loss or damage coverage;

5.1.13 complying with all applicable provisions of the Internal Revenue Code;

5.1.14 paying any fees set by and due to the Commission with funds of the Enterprise;

5.1.15 providing to the Commission any information necessary for the Commission to comply with the regulations of the Commission, including those regulations issued pursuant to the National Environmental Policy Act; and

5.1.16 paying for the cost of fire protection, emergency medical, law enforcement and other public safety services attributable to the conduct of gaming on tribal lands, which costs shall be deemed a Gaming Related Operating Expense and shall be paid with funds of the Enterprise.

5.2 Tribe's Responsibilities. Among other things, and as detailed elsewhere in this Management Agreement, the Tribe shall be responsible for:

5.2.1 enacting an Ordinance governing the conduct of Class II gaming on tribal lands, which Ordinance shall establish the rules for conducting each Class II game of chance;

5.2.2 enforcing any tribal Ordinance governing the conduct of Class II games on tribal lands;

5.2.3 conducting, or arranging for the conduct of, background investigations on any primary management official or key employee of the Gaming Operation and issuing a license to such persons whom the Traditional Council determines are suitable for employment in the Gaming Operation;

5.2.4 providing, or arranging for the providing of, fire protection and other public safety services to the Gaming Operation by appropriate entities in Maverick County, Texas;

5.2.5 selecting and arranging for an independent Certified Public Accountant to provide an annual audit of the Gaming Operation, which audit shall be prepared in accordance with generally accepted accounting principles, pursuant to the provisions of 25 C.F.R. Section 571.12;

5.2.6 negotiating with the Commission the approval of this Agreement in cooperation with Manager as appropriate;

5.2.7 this section intentionally deleted;

5.2.8 assisting Manager in providing to the Commission and information necessary for the Commission to comply with the regulations of the Commission including those regulations issued pursuant to the National Environmental Policy Act; and

tax, fee or other RG

5.2.9 refraining from adopting any ordinance or other tribal law which purports to impose any financial obligation upon Manager, other than as expressly provided for in this Agreement, it being understood that the Tribe shall indemnify and hold Manager harmless therefrom. Should

Tribe impose a financial obligation on Manager contrary to the provisions of this Agreement, Manager shall be reimbursed therefor from Tribe's share of Net Revenues and Non-Gaming Net Revenues.

5.3 Costs to be Deemed an Operating Expense. Prior to commencement of operations, any reasonable costs incurred by the Manager or Tribe in fulfilling the responsibilities described above shall be advanced to the Tribe as part of the Loan contemplated in Section 9.1 hereof. Subsequent to commencement of operations, any reasonable costs incurred by the Manager or Tribe in fulfilling the responsibilities described above shall be deemed a Gaming-Related Operating Expense, provided that such costs must be reasonable, necessary and customary in the industry.

ARTICLE VI
ACCOUNTING AND FINANCES

6.1 Accounting Systems and Procedures. Manager shall maintain full and accurate accounting systems and procedures for the Gaming Enterprise that shall, at a minimum:

6.1.1 include an adequate system of internal accounting controls;

6.1.2 permit the preparation of financial statements in accordance with generally accepted accounting principles;

6.1.3 be susceptible to audit;

6.1.4 permit the Tribe, the Manager, and the Commission to accurately calculate any fees owed pursuant to 25 C.F.R. Section 514.1 and this Agreement;

6.1.5 permit the Tribe, the Manager and the Commission to accurately calculate and verify the percentage of Net Revenues owed to the Tribe and to the Manager under the terms of Section 8.1 of this Agreement;

6.1.6 provide for the reasonable allocation of operating and overhead expenses to the Tribe, Manager, Gaming Enterprise and any other user of shared facilities and services, whenever facilities or services are shared by the Gaming Enterprise and any other user; and

6.1.7 provide for the creation and maintenance of separate and independent bank accounts, cash storage facilities and fund identification procedures designed to prevent commingling of the revenues of the Gaming Operation with any other monies.

6.2 Financial Records. Manager shall maintain complete and accurate books of account for the Gaming Enterprise, which books of account shall be maintained in accordance with generally accepted accounting principles and in accordance with any requirements of the Act or regulations duly promulgated thereunder and under any Compact.

6.3 Access by Tribe. Manager shall provide immediate access to the Gaming Enterprise, including the books and records of such Enterprise, by the Tribe or its authorized representative, who shall have:

6.3.1 the right to verify the daily gross revenues and income from each component of the Gaming Enterprise and the Gaming Operation; and

6.3.2 access to any other information that the Tribe deems appropriate.

6.4 Depositories and Accounts. Manager shall establish sufficient bank accounts as are deemed necessary and advisable for the proper management and control of all revenues generated by the Gaming Enterprise.

6.4.1 The Tribe and Manager shall mutually select the initial depository(ies) to be used.

6.4.2 In the event that Manager should decide that it is in the best interest of the Gaming Enterprise to change any depository, Manager shall so notify the Tribe in writing, no less than 20 days in advance of making any change in the depository(ies).

6.4.3 The notice required under Section 6.4.2, above, shall contain a full and complete statement of the reason(s) for such change; the name of the proposed new depository(ies); and the basis upon which the new depository(ies) was selected.

6.4.4 The Tribe shall have 20 days from its receipt of the notice specified in Section 6.4.2, above, in which to object, in writing, to the proposed change in depository(ies). Failure by the Tribe to object within the 20-day period shall be deemed to be approval of the change in the depository(ies).

6.5 Cash Management System. Manager shall establish a cash management system which is adequate to safeguard the funds of the Gaming Operation and the Gaming Enterprise and shall prevent commingling of Gaming Operation and Gaming Enterprise funds with any other monies. The Tribe shall have the right to oversee the cash management system, including video surveillance.

ARTICLE VII
FINANCIAL REPORTING

7.1 Daily Reports. Manager shall prepare and provide on a regular daily basis to the Tribe a report of the daily income and expenses of the Gaming Operation, including the gross handle and hold of the Gaming Operation.

7.2 Periodic Reports. The financial statements of the Gaming Enterprise and Gaming Operation shall be maintained on a calendar year basis. Manager shall prepare and provide to the Tribe comparative financial statements on a monthly, quarterly and annual basis, which statements shall reflect all sales, revenues and other amounts collected and received by the Gaming Enterprise and all deductions and disbursements made by the Gaming Enterprise, which statements shall be susceptible to audit and verification by the Tribe.

7.3 Audit. The Tribe shall cause an annual audit to be conducted of the financial statements of the Gaming Enterprise and of all contracts for supplies, services or concessions in a contract amount in excess of (except contracts for legal or accounting services).

7.3.1 Said audit shall be conducted by a Certified Public Accountant, selected by the Tribe, who shall be independent from and shall have no other relationship with the Tribe, any component of the Gaming Enterprise, the Gaming Operation, or Manager.

7.3.2 Said audit shall be prepared in accordance with generally accepted accounting principles, pursuant to the provisions of 25 C.F.R. Section 571.12.

7.3.3 The costs of preparing said audit shall be deemed a Gaming-Related Operating Expense.

7.3.4 The report(s) of said audit(s) shall be provided by the Tribe to Manager and to all appropriate governmental agencies, as required by law, and may be used by Manager for reporting purposes under federal and state securities laws, if required.

ARTICLE VIII
REVENUES, FEES, PROFITS AND TAXES

8.1 Management Fee. In consideration of the performance of the duties and obligations assumed by Manager hereunder, Tribe agrees that Manager shall receive compensation equal to the sum

Management Fees shall be calculated monthly and adjusted annually. The annual adjustment shall be reviewed and confirmed by the Certified Public Accountant.

Tribe agrees that it shall pay all principal payments required to be made on the Loan or any loans provided to the Gaming Enterprise out of Tribe's share of Net Revenues and Non-Gaming Net Revenues,

Manager agrees that it shall pay the balance of all principal payments required to be made on the Loan or any loans provided to the Gaming Enterprise.

8.2 Determination of Gaming-Related Operating Expenses. Gaming-Related Operating Expenses shall be determined in accordance with GAAP and shall include:

8.2.1 payment of interest on the Loan and any other loans provided by or secured with the assistance of Manager for the construction or outfitting of the Gaming Facility and start-up (development) costs of the Gaming Operation;

8.2.2 payment of interest on installment contract purchases secured by the Gaming Operation;

8.2.3 the payment of salaries, wages, benefit programs, and training for employees of the Gaming Operation, including the salaries and benefits provided to the General Manager and the Tribal Representative, shall be deemed a Gaming Related Operating Expense;

8.2.4 payment for contract labor or services, including professional legal and accounting fees, incurred by the Gaming Operation;

8.2.5 utility services and trash removal, provided that any such services provided to the Gaming Enterprise shall be properly allocated between the Gaming Operation and the ancillary users and activities, and only the portion attributable to the Gaming Operation shall be included in the calculation of Gaming-Related Operating Expenses;

8.2.6 increased costs associated with the provision of fire protection, emergency medical, and law enforcement services that are attributable to the conduct of gaming on tribal lands;

8.2.7 advertising, promotion and marketing of the Gaming Operation, including the cost of busing or other transportation of customers to the

Facility, if such costs are borne by the Gaming Operation, and including such portion of any loss realized from non-gaming operations determined by Manager and Tribe to be a proper allocation to the marketing budget;

8.2.8 fees, costs and dues associated with the Tribe's or Gaming Operation's membership and participation in trade, political action and related associations;

8.2.9 security costs and the cost of conducting background investigations on prospective primary management officials and key employees of the Gaming Operation;

8.2.10 reasonable travel expenses for officers, agents or employees of the Manager and the Tribe to oversee and inspect the Gaming Operation;

8.2.11 fees required to be paid to the Commission;

8.2.12 the cost of providing insurance for that part of the Gaming Facility attributable to the conduct of the Gaming Operation and for bonding employees of the Gaming Operation;

8.2.13 any federal or state taxes or assessments which are properly levied against, and paid by, the Gaming Operation;

8.2.14 reasonable costs incurred by the Tribe in regulating the Gaming Operation;

8.2.15 the purchase of goods, supplies, materials, and uniforms reasonably necessary for the conduct of Gaming;

8.2.16 other expenses specifically designated as operating expenses of the Gaming Operation by the terms of this Agreement or by the annual budget of the Gaming Operation; and

8.2.17 reasonable accruals, as agreed upon by the Manager and Traditional Council, to provide for future payment of Gaming-Related Operating Expenses and jackpot type prizes.

8.3 Costs Must Be Reasonable. All costs deducted as Gaming-Related Operating Expenses pursuant to Section 8.2, above, must be reasonable, necessary and customary to the industry.

8.4 Annual Budget. All costs deducted as Gaming-Related Operating Expenses pursuant to Section 8.2, above, shall be generally established and agreed upon, in advance, in

an annual budget, which budget shall be approved by Manager and the Traditional Council, it being understood that budgets provide general guidelines for operation but must be flexible to take into account actual operating conditions. In the event that it appears to the Manager that such operating conditions shall cause the budget to vary by

.n any one budget category, Manager shall notify Tribe. Tribe may then request that Manager prepare an updated budget that explains, with specificity, the reason(s) for the change(s).

8.4.1 This Section intentionally deleted.

8.5 Guaranteed Minimum Monthly Payment to Tribe. Following the first full month of operations, in any month in which the Tribe's

8.6 Disbursal of Profits. The disbursal of profits shall be made within 20 days of the close of each calendar month, following calculation of Net Revenues and Non-Gaming Net Revenues by Manager, and shall be accompanied by a report of said calculations and the resulting disbursal plan, which report shall be delivered to Tribe. All payments to the Tribe of its share of Net Revenues and Non-Gaming Net Revenues or its guaranteed payment shall be deposited as instructed by the Tribe, in writing, from time to time. Tribe and Manager shall bear the burden of any loss for non-gaming operations in the following ratio:

8.6.1 The Tribe shall review each disbursal report and shall notify Manager of any objection(s) to the report within 60 days of Tribe's receipt of the same.

8.6.2 Failure of the Tribe to notify Manager of its objection(s) to a disbursal report within the 60-day period shall constitute a waiver of Tribe's objection(s) provided that there shall be no time limit for the Tribe to make an objection based upon Manager's failure to properly calculate the disbursals; to adequately report income and expenses; or to fraudulently conceal from or report data to the Tribe.

8.6.3 If it is determined that Manager has miscalculated the Tribe's share of Net Revenues, Manager shall immediately repay to Tribe such amounts as are determined to be owed, with interest which shall accrue from the date the amounts should initially have been paid to the Tribe at the

8.6.4 In carrying out its duties under this Agreement, Manager shall be held to the standards of a fiduciary in its dealings with and responsibilities towards the Tribe as hereinbefore set forth.

8.7 **Preparation of Federal and State Tax Reports.** Manager shall prepare or cause to be prepared such periodic income and employment reports as may be required by the Internal Revenue Service, Texas State Comptroller, Texas Employment Commission and any other appropriate State agency and shall remit all amounts due under the same by the Gaming Enterprise.

8.7.1 **Payment of Penalties and Fees.** Manager shall pay, from its share of Net Revenues or otherwise, any penalty or fee assessed by any Federal or State taxing or regulatory authority against the Gaming Enterprise for the improper or untimely submission of income or employment reports and/or taxes or assessments owed unless such delay is caused by Tribe.

8.8 **Compliance with Tax Withholding Laws.** Manager shall cause to be withheld (1) from the salaries or wages paid to employees and (2) from the winnings paid to customers all such amounts as may be required by the Internal Revenue Code of 1986, as amended, and other applicable laws and regulations, and shall maintain records accounting for the same.

8.9 **Excess Expenses of the Gaming Enterprise.** Manager and Tribe recognize that from time to time the expenses of the Gaming Enterprise may exceed corresponding revenues.

ARTICLE IX
CONSTRUCTION AND DEVELOPMENT LOAN

9.1 **Obtaining Loan.** Manager shall loan to the Tribe or secure a loan or loans for the Tribe to provide sufficient funds to pay for all construction, development and start-up costs of the Gaming Facility and Gaming Enterprise ("the Loan"). The Loan shall include funds for advances to the Tribe pursuant to Article 19.1 hereof, acquiring land in the vicinity of the existing Reservation (which land shall be conveyed to the Tribe pursuant to Section 9.1.7 or 9.1.8 hereof); materials required for the construction and furnishing of the Gaming Facility on the Property and ancillary services (such as parking facilities and road improvements); gaming supplies, equipment, furniture and fixtures; professional fees, including those of attorneys; and related expenses incident to the construction and start-u the Gaming Enterprise, including funding the house bank and paying the initial salaries wages of employees.

9.1.1 Limitation on Loan Amount for Class II. The Loan(s) secured or funds advanced for the construction, development and start-up of the Class II Gaming Facility and Gaming Enterprise shall not exceed The loan amount may be increased only by amendment to this Agreement, which amendment must be agreed to by the parties and approved by the Commission before becoming effective.

9.1.1.1 Additional Loan for Class II. In the event that the Class II Gaming Facility requires capital improvements or additions or replacements to furniture, fixtures or equipment, Manager may loan the Tribe additional funds for such purposes, not to exceed . Such additional advance shall be a part of the Loan, shall bear interest at the rate of and shall be amortized over the remaining term of the Loan. Tribe may, in its sole discretion,

bear interest at the rate of per annum and shall be amortized over the remaining term of the Loan. Interest on shall be a Gaming Related Operating Expense. Principal shall be allocated and repaid in the same manner as set forth in Section 8.1, above.

9.1.2 This section has been left blank intentionally.

9.1.3 Interest on Loan. The Loan shall bear interest at the rate of annum.

9.1.4 Security on Loan and Loan Documents. The Loan shall be secured by undisbursed Net Revenues, Non-Gaming Net Revenues, and furniture, fixtures and equipment of the Gaming Enterprise. The Loan shall be evidenced by the Loan Documents.

9.1.4.1 For purposes of this Agreement and the Loan Documents, "fixtures" shall mean those items which may be easily removed from the Gaming Facility without causing significant damage or destruction and which may be removed without rendering the Gaming Facility unusable for its intended purpose or generally uninhabitable. "Fixtures" shall include gaming equipment or devices and/or computer or related electronic equipment.

9.1.5 Term of Loan. The term of the Loan shall be that period established by the Loan Documents and may

provided that in no event may the Loan Documents confer upon Manager any right or authority to manage any or part of the Gaming Facility or Gaming Operation

9.1.6 Final Distribution. Upon expiration of this Agreement, the Net Revenues then on hand shall be distributed as provided in Section 8.6 of this Agreement; and title to the Gaming Facility, furniture, fixtures, supplies and equipment shall be retained by the Tribe. Any final accounting shall allocate prepaid expenses accruing during the term of this Agreement and thereafter. The Tribe's obligation to repay the Loan shall continue subject to the limitation on security provided in Section 9.1.4 and the Loan Documents.

9.1.7 Conveyance of Interests in Previously-Acquired Land to Tribe. Within 30 days of the approval of this Agreement by the Commission, Manager shall convey to the Tribe by special warranty deed, free of all taxes, liens and encumbrances, excepting existing rights of way and easements of record, all of its right, title and interest in any and all land described in Exhibit B hereof.

9.1.8 Conveyance of Interests in After-Acquired Land to Tribe. Should Manager acquire additional lands described in Exhibit C hereof after the execution of this Agreement by Tribe and Manager, Manager shall convey all of its right, title and interest in such lands to the Tribe by general warranty deed, free of all taxes, liens and encumbrances, excepting existing rights-of-way and easements of record, within 30 days of the later of (i) acquiring the same, or (ii) Project Approval.

9.2 Manager's Interest In Tribal Lands. Nothing in this Agreement shall convey, or shall be interpreted as conveying, any interest in tribal lands to Manager.

ARTICLE X
DURATION OF AGREEMENT

This Agreement shall become effective when (and only if) it is approved by the Commission, notwithstanding the date of signature of the parties, and shall remain in full force and effect for a term expiring commencement of Class II operations; provided, however: that in the event that any portion of the loan remains outstanding on the of commencement of Class II operations, then the term of this Agreement

years from commencement of Class II operations; and provided that this Agreement may be terminated at an earlier date pursuant to Article XI below.

ARTICLE XI
TERMINATION

11.1 By Mutual Consent. This agreement may be terminated for any reason or for no reason by mutual consent of the parties. Such consent must be documented, in writing, through appropriate corporate action by Manager and by resolution of the Traditional Council.

11.1.1 In the event of termination by mutual consent, the Net Revenues then accrued shall be distributed pursuant to the terms of Article VIII of this Agreement.

11.1.2 Termination of this Agreement by mutual consent of the parties shall not require the approval of the Commission.

11.2 By Tribe. This Agreement but not the loan(s) may be terminated by the Tribe because of an uncured material breach by Manager. RG

11.2.1 For purposes of this Section, "material breach" shall also include, but not be limited to, Manager's failure to:

a) timely disburse material amounts of Net Revenues and Non-Gaming Net Revenues to the Tribe;

b) accurately account for Net Revenues and Non-Gaming Net Revenues owed to the Tribe;

c) comply with the material terms of the Act or regulations promulgated thereunder;

d) comply with the material terms of any gaming ordinance or other applicable law of the Tribe or regulations promulgated thereunder; or

e) perform any material duty or obligation imposed by this Agreement.

For purposes of this Section 11.2, "uncured material breach" shall also include the situation where, after being apprised by Tribe of conduct that constitutes a breach and despite Manager's having cured that breach, Manager suffers or permits its employee(s) or agent(s) to continue to engage in the breaching conduct in a continuous, recurring manner.

11.2.2 Before terminating this Agreement pursuant to this Section, the Tribe shall provide Manager with a written notice of its intention to declare a default, which notice shall state, with specificity, the alleged breach and

which shall require that Manager commence such cure within 20 days and diligently pursue such cure thereafter.

11.2.3 Manager may cure the alleged breach by making restitution, with , to the Tribe for any amounts wrongfully withheld from the Tribe's share of Net Revenues or by taking any action wrongfully omitted, as appropriate.

11.2.4 In the event of termination under this Section, the parties shall retain or receive all monies properly paid or payable to them pursuant to Article VIII of this Agreement and the Tribe shall retain title to all facilities, fixtures, improvements, supplies, equipment, funds and accounts of the Gaming Enterprise, subject to the Loan Documents.

11.2.5 Termination of this Agreement under this Section shall not require the approval of the Commission before such termination shall become effective.

11.2.6 Nothing in this Section shall constitute or be deemed to constitute a waiver of the Tribe's right to pursue other remedies at law or in equity against Manager for breach of this Agreement.

11.3 By Manager. This Agreement may be terminated by Manager because of an uncured material breach by the Tribe or nonprofitability of the Gaming Enterprise.

11.3.1 For purposes of this Section, "material breach" shall include, but shall not be limited to, the Tribe's failure to:

a) exempt Manager and the Gaming Operation from any fees, assessments or taxes that Tribe may now or hereafter assess against businesses operated or income earned on tribal lands;

b) use its best efforts to secure the approval of this Agreement by the Commission; or

c) cooperate fully with Manager in the development and promotion of the Gaming Operation.

11.3.2 Before terminating this Agreement pursuant to this Section, Manager shall provide Tribe with a written notice of (i) its determination of nonprofitability or (ii) its intention to declare a default, which notice shall state, with specificity, the alleged breach and which shall require that the Tribe commence such cure within 20 days and diligently pursue such cure thereafter.

11.3.3 Tribe may cure the alleged breach by making restitution to Manager for any amounts collected as an assessment against the Gaming Enterprise or Manager's distributive share of Net Revenues or Non-Gaming Net Revenues therefrom or by taking any action wrongfully omitted, as appropriate.

11.3.4 In the event of termination under this Section, the parties shall retain all monies properly paid to them pursuant to Article VIII of this Agreement and the Tribe shall retain title to all facilities, fixtures, improvements, supplies, equipment, funds and accounts of the Gaming Enterprise, subject to the Loan Documents.

11.3.5 Termination of this Agreement under this Section shall not require the approval of the Commission before such termination shall become effective.

11.3.6 Nothing in this Section shall constitute or be deemed to constitute a waiver of the Manager's right to pursue other remedies at law or in equity against Tribe for breach of this Agreement.

11.4 Change In Applicable Law. It is the understanding and intention of the parties that all gaming activities undertaken in conjunction with this Agreement shall be conducted in accordance with applicable federal and tribal laws. If this Agreement or any material aspect of Gaming is determined by the Congress of the United States, the Department of the Interior, the Commission, or the final judgment of a court of competent jurisdiction to be unlawful, the obligations of the parties hereunder shall cease and this Agreement shall be of no further force or effect.

11.4.1 In the event that this Agreement is terminated under this Section, the Net Revenues and Non-Gaming Net Revenues shall be distributed as provided in Article VIII of this Agreement and the furnishings, fixtures, supplies and equipment of the Gaming Enterprise shall be sold, with the proceeds from the sale used to retire the Loan, and the balance, if any, shall be distributed

11.4.2 Manager shall have no right to collect any additional amounts, other than those stated in Section 11.4.1, above, from the Tribe and Manager shall have no surviving interest in the Gaming Facility or Property in the event of termination under this Section.

11.4.3 If, after a change in applicable law, the recommencement of Gaming is possible and if Manager or Tribe has not terminated the Management Agreement under any provision of this Agreement other than this Section 11.4, the Management Agreement shall recommence and the period of such cessation shall not be deemed to have been part of the

term of the Management Agreement and the date of expiration of the term of the Management Agreement shall be extended by the number of days of such cessation period. Any reasonable payments made to any third party to eliminate rights acquired in the Property, Facility or Gaming Operation during the period of cessation shall be deemed an Operating Expense of the Gaming Operation.

11.5 Dissolution, Insolvency or Bankruptcy of Manager. If Manager is dissolved, executes any petition under the Bankruptcy Code, files for or is declared bankrupt, becomes insolvent, ceases to function as a business entity, or if the Manager's creditors cause to be executed any valid petition under the Bankruptcy Code, Manager's rights under this Agreement shall cease and the Agreement shall terminate.

11.5.1 In the event of termination under this Section, an accounting shall be made and Manager or its successor or legal representative shall be entitled to Manager's distributive share of the Net Revenues or shall be liable for Manager's share of the debts due as of the date of Manager's dissolution, declaration of insolvency or filing of a petition for bankruptcy.

11.5.2 In the event of termination under this Section, Tribe shall thereafter become the sole entity entitled to Net Revenues, subject to the Loan Documents.

11.6 Impossibility. If, during the term of this Agreement, the Gaming Facility is damaged or destroyed by fire, war, or other casualty, or by an Act of God, and such damage or destruction was not the result of an intentional act of Manager, Manager shall have the options listed below.

11.6.1 Repair or Replacement Option/Sufficient Insurance Proceeds. If the proceeds from any insurance policy are sufficient to restore the Gaming Facility to its condition prior to the casualty, Manager, at its sole option, may elect to reconstruct the Gaming Facility with the proceeds from any policy that insured the Facility against damage or loss by the casualty.

11.6.1.1 Manager shall advise the Tribe, in writing, of its election of this option no later than 30 days from the date that a preliminary settlement is offered by the insurance company and must begin reconstruction of the Facility no later than 60 days following the date of such notification to the Tribe.

11.6.2 Repair or Replacement Option/Insufficient Insurance Proceeds. If the proceeds from any insurance policy are <u>not</u> sufficient to restore the Gaming Facility to its condition prior to the casualty, Manager shall so

notify the Tribe, in writing, no later than 30 days from the date that a preliminary settlement is offered by the insurance company, and shall specify the amount of additional funds that must be invested in reconstructing the Facility to make it suitable for the conduct of Gaming; provided, however, that in no event shall the additional funds invested in reconstructing the Facility cause the Loan to exceed the maximum amounts set forth in Sections 9.1.1 and 9.1.1.1, above, without an amendment to this Agreement, which amendment must be agreed to by the parties and approved by the Commission before becoming effective.

11.6.2.1 Tribe shall have 20 days in which to approve or disapprove of the commitment of the additional funds to reconstruct the Gaming Facility. The Tribe's failure to notify Manager, in writing, within the 20-day period, shall constitute the Tribe's approval of Manager proceeding with reconstruction of the Facility.

11.6.2.2 If the Tribe should disapprove of the commitment of additional funds to reconstruct the Gaming Facility, Manager shall not reconstruct the Facility. Instead, any remaining furniture, fixtures and furnishings shall be sold and the proceeds from that sale, plus the proceeds from any insurance policy, shall be applied towards retiring the Loan, with any excess distributed

11.6.3 Abandonment Option. In the event that damage to the Gaming Facility exceeds of the value of the Gaming Facility prior to the loss, or in the event that more than of the areas of the Gaming Facility that are accessible to the public are damaged, destroyed, or otherwise rendered unusable for gaming purposes, Manager may elect not to reconstruct the Gaming Facility and may abandon the Gaming Enterprise.

11.6.3.1 Should Manager elect to abandon the Gaming Enterprise, the Tribe may elect to reconstruct the Gaming Facility, using any proceeds from any insurance policy for that purpose, and resume the Gaming Enterprise.

11.6.3.2 Manager shall notify the Tribe, in writing, of its intention to abandon the Gaming Facility and the reason(s) therefor no later than 30 days from the date that a preliminary settlement is offered by the insurance company.

11.6.3.3 Should Tribe elect to reconstruct the Gaming Facility and resume the Gaming Enterprise after the same have been abandoned by Manager, the Tribe shall retain title to any furniture, fixtures, furnishings or supplies used in the Gaming Enterprise and, from the date of Manager's abandonment forward, Tribe shall be the sole entity entitled to Net Revenues and Net Non-Gaming Revenues, subject to the Loan Documents.

11.6.4 **Retirement of Loan.** During any month in which Gaming Operations cannot be conducted because of damage to or destruction of the Gaming Facility, Manager

11.6.5 **Continuation of Term.** The term of this Agreement shall automatically be extended by the number of days of cessation of operations caused by any circumstances described under this Section 11.6; provided however in no event shall any such extension cause the term of this Agreement to extend

11.7 **Attorneys' Fees.** In the event that either party files a civil action to compel termination of or compliance with this Agreement, a court of competent jurisdiction may award attorneys' fees to the prevailing party.

ARTICLE XII
DISPUTE RESOLUTION

12.1 **Disputes Between Manager and Tribe.**

12.1.1 **Arbitration.** Any controversy or claim arising out of or related to this Agreement or to the breach thereof shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

12.1.2 **Selection of Arbitrators.** The Tribe shall select one arbitrator, the Manager shall select one arbitrator and the two so selected shall select a third arbitrator to resolve any dispute under this Section.

12.1.3 **Qualifications of Arbitrators.** The Tribe or the Manager may specify and require that each arbitrator selected must be an attorney licensed to practice law in the State of Texas and/or must be an attorney experienced in the practice of federal Indian law.

12.1.4 **Governing Law.** Enforcement of this Agreement shall be governed by the Act, any gaming ordinance(s) enacted and regulations promulgated thereunder by Tribe, and approved by the Commission, where appropriate. In the event that federal or tribal laws do not address the disputed area, the laws of the State of Texas shall govern resolution of the dispute.

12.1.5 **Enforcement of Arbitration Award.** Any arbitration shall be governed by Title 9 of the United States Code, except insofar as the same may be altered or limited by the provisions of this Agreement. Judgment upon any arbitration award may be enforced in any court of competent jurisdiction subject to the provisions of Article XV of this Agreement.

12.2 **Disputes Between Manager and Customers of the Gaming Operation.**

12.2.1 **Rules of Play.** Manager shall post the rules of play for each type of game, along with these dispute-resolution procedures, at a conspicuous place, visible and accessible to customers, in the Gaming Facility. All games shall be conducted fairly and honestly, pursuant to the posted rules of play. The posted rules of play shall govern the resolution of any dispute between the Manager and any customer.

12.2.2 **General Manager.** Any dispute shall be presented initially to the General Manager. The General Manager shall strive to satisfy the customer.

12.2.3 **Manager.** If the General Manager cannot resolve a dispute to the satisfaction of a customer, the General Manager shall present the dispute, in writing, to the Manager within three working days. The Manager shall attempt to resolve the dispute to the customer's satisfaction. The decision of the Manager shall be in writing, and shall be sent by certified mail to the customer within 10 calendar days of the Manager's receipt of the writing describing the dispute from the General Manager, with a copy to the Tribal Representative and the Tribal Gaming Board. The decision of the Manager shall advise the customer that he/she may appeal the Manager's decision to the Tribal Gaming Board pursuant to Section 12.2.4, below.

12.2.4 **Tribal Gaming Board.** Any customer who is not satisfied with the decision of the Manager may present his/her dispute to the Tribal Gaming Board, in writing, no later than 10 days after the customer's receipt of the decision of the Manager. The Tribal Gaming Board shall review the evidence and issue a decision no later than 20 days following receipt of the customer's appeal of the Manager's decision.

The decision of the Tribal Gaming Board shall be in writing and shall be final.

12.3 Disputes Between Manager and Gaming Operation Employees.

12.3.1 Non-Discrimination Policy. The Gaming Enterprise shall not discriminate in employment, promotion, training, assignment of overtime or other premium pay or other aspects of personnel management on the basis of race, sex, national origin, age, or disability, except insofar as preference in employment, training and promotions shall be accorded to enrolled members of the Tribe, pursuant to Section 16.3 below.

12.3.2 Grievance Procedure. The personnel policies of the Gaming Enterprise shall include a Chapter on resolution of employee grievances, which shall be promulgated by Manager in consultation with the Tribal Gaming Board. The chapter shall encourage the resolution of employee grievances at the lowest possible supervisory level. The grievance procedure shall consist of the following steps:

(a) Discuss the grievance with the supervisor;

(b) Submit the grievance to the General Manager;

(c) Request a Grievance Conference with supervisor and General Manager; and

(d) A Grievance Committee hearing held, as set forth in Section 12.3.3.

12.3.3 Grievance Committee. Any grievance that cannot be resolved to the employee's satisfaction by his or her supervisor or the General Manager may be presented, in writing, to the Gaming Enterprise Grievance Committee. The Grievance Committee shall be comprised of one member appointed by the Tribal Gaming Board, one member appointed by the Manager and a third member appointed by agreement of the Manager and Tribal Gaming Board. All decisions of the Grievance Committee shall be final and shall be rendered in writing.

ARTICLE XIII
ASSIGNMENT AND SUBCONTRACTING

13.1 Limitation on Assignment. Neither the benefits nor the obligations of this Agreement may be assigned to a third party without the prior written consent of the Tribe and of the Commission.

13.2 Limitation on Subcontracting. Manager shall not subcontract management of any portion of the Gaming Operation without the prior written consent of the Tribe and of the Commission, provided that this limitation shall not prohibit Manager from retaining consultants or from subcontracting non-gaming activities of the Gaming Enterprise, such as food service, transportation, valet parking, check cashing, gift shop, beverage service and entertainment, provided however, that Manager must obtain the written consent of the Tribe before subcontracting these aspects of the Gaming Enterprise.

13.3 Background Investigation of Prospective Assignee(s) and Subcontractors. Prior to the assignment or subcontracting of Manager's interests in this Agreement or of any portion of the Gaming Operation to a third party or third parties, Manager shall cause to be conducted a background investigation on the proposed assignee(s) or subcontractor(s) in accordance with the provisions of 25 C.F.R. Part 537. The cost of such background investigation shall be borne by Manager and shall not be considered a Gaming-Related Operating Expense.

ARTICLE XIV
INSURANCE

14.1 Public Liability Insurance. The Manager shall maintain public liability insurance in an amount of no less

14.2 Property Insurance. Manager shall maintain full replacement cost insurance on the Gaming Facility, improvements and contents thereof, which insurance shall extend to loss or damage by fire, with extended coverage endorsement and vandalism coverage, and which shall be in an amount agreed upon by the Tribe. The amount of any deductibles under any such insurance shall be acceptable to Tribe and Manager and payment thereon shall constitute a Gaming-Related Operating Expense.

14.2.1 Should the Tribe and Manager fail to agree upon the amount of required property insurance, the Tribe shall cause an experienced and licensed appraiser to determine the same. The cost of the appraisal shall be a Gaming-Related Operating Expense.

14.3 Named Insured. The Tribe and Manager shall be named as an insured in all insurance policies and Manager shall supply to the Tribe written evidence satisfactory to the Tribe of such continuing insurance coverage on an annual basis.

ARTICLE XV
SOVEREIGN IMMUNITY

15.1 Limited Waiver of Sovereign Immunity. The Tribe expressly waives its sovereign immunity from suit and consents to (i) submitting to the jurisdiction of the arbitration process provided for in Article XII hereof and (ii) being sued in the United States District Court for the District of Western Texas for the limited purpose of enforcing the covenants in this Agreement as between the Tribe and Manager (hereinafter referred to as "Claim"), including the arbitration provisions of Article XII hereof. In the event that the United States District Court for the District of Western Texas should determine that it does not have jurisdiction over any Claim or any of the parties hereto, the Tribe extends its consent to being sued to such actions brought in the District Court, Maverick County, Texas. The waiver of sovereign immunity contained in this Section is further limited as follows:

15.1.1 Monetary Damages. The Tribe waives its immunity in connection with any arbitration award entered pursuant to Section 12.1, above, and any court order to enforce such an award to the extent that such an award or order may be enforced or executed against (i) furniture, fixtures and equipment of the Gaming Enterprise; (ii) undistributed Net Revenues; and (iii) undistributed Non-Gaming Net Revenues. If it has been specifically found pursuant to Section 12.1, above, that the Tribe has prejudiced Manager's rights under this Agreement or has, in a material way, caused the lack of business success of the Gaming Operation, then the waiver of sovereign immunity herein shall extend to the future proceeds of any other gaming operation(s) conducted by the Tribe at any other location or any other business operated in the Gaming Facility, and any arbitration award or order to enforce such an award may be enforced or executed against such proceeds. No other assets of the Tribe are, or shall be, subject to the Security Agreement nor are, or shall, such assets be available to satisfy any such award or judgment.

15.1.2 Equitable Relief. The Tribe waives its immunity in connection with any arbitration or court order to provide a provisional remedy in connection with any Claim pending under this Agreement and further consents that the arbitrators or any court of competent jurisdiction may grant equitable relief against the Tribe, either in the form of mandamus relief/specific performance or injunction which compels the Tribe to perform a duty ascribed to the Tribe under the terms of this Agreement or which prohibits the Tribe from engaging in conduct that is contrary to the terms of this Agreement.

ARTICLE XVI
GAMING OPERATION EMPLOYEES

16.1 Personnel Management. All employees of the Gaming Enterprise shall be considered employees of said Enterprise, provided that the General Manager shall be considered an employee of the Manager and the Tribal Representative shall be considered an employee of the Tribe.

16.2 Personnel Policies. The Manager shall promulgate personnel policies and procedures which shall prescribe the rules and regulations governing all aspects of personnel management, including, but not limited to, job classification, compensation, hiring, firing, training, promotion, discipline and grievances of employees of the Gaming Enterprise.

16.2.1 The personnel polices and procedures shall conform, to the greatest extent possible, with generally accepted personnel polices and procedures of the gaming/hospitality industry, provided that preference in employment, training and promotion shall be accorded to members of the Tribe as provided in Section 16.3, below.

16.2.2 The Manager shall obtain the Tribe's approval of the personnel policies and procedures prior to adopting, implementing and/or revising the same.

16.3 Tribal Preference. Preference in initial employment, training and promotion shall be accorded to enrolled members of the Tribe.

16.3.1 Any enrolled Tribal member who possesses the required knowledge, skills and abilities for a particular job shall be given preference in employment in that job.

16.3.2 Any enrolled Tribal member who demonstrates potential for accepting a more responsible position in the Gaming Enterprise shall be accorded preference in on-the-job and classroom training, as appropriate, for, and promotion to, that position.

16.4 Security Clearance and Background Investigations. Except as provided in Section 16.5, below, the Tribe shall conduct or shall cause to be conducted such background investigation on each person selected to fill a position in the Gaming Operation as is necessary and appropriate to the position to be filled and the responsibilities of such position.

16.4.1 Report to Tribal Gaming Board. The results of each background investigation shall be reported to the Tribal Gaming Board.

16.4.2 Eligibility Determination. The Tribal Gaming Board shall have ten working days from the receipt of a background investigation to

disapprove the employment of a person in the Gaming Operation. The Board's failure to disapprove the employment of a person within the prescribed period shall constitute the Board's approval of the employment of said person. Upon request by Manager, or as required by the Compact, the Tribal Gaming Board shall issue a license to an approved employee.

16.4.3 **Applicable Standards.** Manager shall not employ in the Gaming Operation any person who, in the sole determination of the Tribal Gaming Board, poses a threat to the public interest or to the effective regulation of gaming, or who creates or enhances the danger of unsuitable, unfair or illegal practices and methods and activities in the conduct of gaming.

16.5 **Primary Management Officials and Key Employees.** Any person employed as a primary management official or key employee of the Gaming Operation must complete a written application form, in three originals, which contains, at a minimum, the information listed in 25 C.F.R. Sections 556.3 and 556.4. Until such time as a person employed as a primary management official or key employee is issued a license by the Traditional Council, such person's employment shall be temporary, "at will," and such person shall be subject to immediate termination for cause or for no cause. In no event will any person be employed as a Primary Management Official or Key Employee unless such person has been issued a license within ninety (90) days of commencement of employment.

16.5.1 **Notice to Tribe.** Immediately upon employing any person as a primary management official or key employee, the Manager shall so notify the Tribe in writing by certified mail. The notice shall contain two originals of the person's completed application form with the information required by Section 16.5, above.

16.5.2 **Background Investigation.** Immediately upon receiving notice that a person has been employed as a primary management official or key employee, the Tribe shall forward one original of the person's application form to the Commission and shall initiate or shall cause to be initiated a detailed background investigation of such person in accordance with the provisions of 25 C.F.R. Section 556.4.

16.5.3 **Eligibility Determination.** The Traditional Council shall have the sole responsibility and authority for determining whether a prospective primary management official or key employee is eligible to be licensed as a primary management official or key employee in the Gaming Operation.

16.5.4 **Applicable Standards.** No person who poses a threat to the public interest or to the effective regulation of gaming or who creates or

enhances the danger of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall be licensed as a primary management official or key employee.

16.5.5 License Issuance. No later than 60 days after a primary management official or key employee begins employment at the Gaming Operation, the Traditional Council shall forward to the Commission an investigative report on such official or employee pursuant to 25 C.F.R. Section 558.3(a)-(b).

16.5.5.1 If the Commission notifies the Tribe that it has no objection(s) to the employment of the subject person as a primary management official or key employee, the Traditional Council may issue said person a gaming license.

16.5.5.2 If the Commission notifies the Tribe that it objects to the employment of the subject person as a primary management official or key employee, the Traditional Council shall reconsider the employment of said person, giving due consideration to the objection(s) itemized by the Commission.

16.5.5.3 The Traditional Council shall make the final decision whether to issue a gaming license to any prospective primary management official or key employee.

16.5.5.4 Should the Traditional Council decide not to issue a gaming license to a person employed as a primary management official or key employee, it shall so notify the Manager in writing by certified mail. Upon receipt of such notice, the Manager shall immediately terminate the employment of said primary management official or key employee.

16.5.6 License Suspension/Revocation. If, after a primary management official or key employee has been issued a gaming license, the Tribe receives reliable information indicating that the employee or official is not eligible for employment under Section 16.5.4, above, the Tribe shall suspend such license and shall notify the licensee and Manager, in writing by certified mail, of the suspension and the proposed revocation. The notice shall contain the date, time and place at which a hearing to determine whether the license should be revoked will be conducted.

16.5.6.1 Immediately upon receipt of the notice of suspension, the Manager shall suspend the subject primary management

official or key employee from all duties and responsibilities with respect to the Gaming Operation.

16.5.6.2 The Traditional Council shall preside at a hearing at which evidence shall be presented and a determination made as to whether to revoke or reinstate the suspended gaming license. The decision of the Traditional Council shall be final.

16.5.6.3 The Traditional Council shall notify the Commission, in writing by certified mail, of its decision to revoke or reinstate any gaming license that was previously suspended by the Council.

16.6 Emergency Employment. If a position becomes vacant and, in Manager's judgment, an extended vacancy in the position would cause substantial loss of revenue, quality of service, or would otherwise jeopardize the level of performance, and thus the reputation, of the Gaming Enterprise, Manager may declare the subject position to be an emergency vacancy.

16.6.1 Manager may fill any emergency vacancy with any person whom Manager determines to be competent, in terms of knowledge, skills and abilities, to satisfactorily perform the duties of the subject position.

16.6.2 Any person selected to fill an emergency vacancy shall serve in that position temporarily, "at will", and may be dismissed for cause or for no cause, pending the completion of the background and/or licensing requirements specified in Sections 16.4 and 16.5, as applicable.

16.6.3 Manager shall not use or abuse its authority under this Section to undermine or subvert the tribal employment preference provisions of Section 16.3, above.

16.7 General Manager. Manager may appoint and hire as its representative to the Gaming Enterprise a General Manager who shall serve in the capacity generally described below.

16.7.1 Duties. The General Manager shall be the director of the Gaming Enterprise, with primary authority over the Gaming Enterprise and its employees and shall have, or shall delegate to an appropriate staff member, responsibility and authority for the day-to-day operations of the Gaming Enterprise. The General Manager shall have ultimate responsibility for all delegated tasks, and shall adequately manage, supervise and monitor the same to ensure the successful operation of the Gaming Enterprise, including the Gaming Operation.

16.7.2 Status. The General Manager shall be deemed a primary management official and shall be subject to the licensing and background investigation requirements of Section 16.5, above. The General Manager shall serve at the pleasure of the Manager, except as otherwise provided in Section 16.5, above.

16.7.3 Compensation. The Manager shall determine the compensation to be paid to the General Manager. Said compensation shall be deemed a Gaming-Related Operating Expense.

16.8 Tribal Representative. The Traditional Council may appoint by Resolution as its representative to the Gaming Enterprise a Tribal Representative who shall serve in the capacity generally described below.

16.8.1 Duties. The Tribal Representative shall serve as the agent of the Traditional Council and shall exercise all authorities and responsibilities assigned to the Council or to the Tribe under the terms of this Agreement, except as may be limited by the Traditional Council and provided that the authority to determine the Tribal Representative's eligibility to be licensed as a primary management official may be exercised only by the Traditional Council.

16.8.2 Status. The Tribal Representative shall be deemed a primary management official and shall be subject to the licensing and background investigation requirements of Section 16.5, above. The Tribal Representative shall serve at the pleasure of the Traditional Council.

16.8.3 Compensation. The Traditional Council shall determine the compensation to be paid to the Tribal Representative. Said compensation shall be deemed to be a Gaming-Related Operating Expense.

16.9 Attorney. Manager and Tribe shall mutually agree upon an attorney(s) who shall represent the Gaming Enterprise and who shall provide general legal counsel to the Gaming Enterprise.

16.9.1 Qualifications. The attorney(s) retained by Manager and Tribe to represent and provide general legal counsel to the Gaming Enterprise shall have legal experience in the gaming industry.

16.9.2 Limitation on Employment of Attorney. Under no circumstances may the attorney(s) retained to represent and provide general legal counsel to the Gaming Enterprise be a present or former attorney for or counsel to Manager, its principals or the Tribe.

ARTICLE XVII
EXCLUSIVITY

17.1 Exclusive. During the term of this Agreement, Manager shall have the exclusive right and authority to manage all Class II gaming operations on tribal lands.

17.2 Limitation on Competition. During the term of this Agreement, Manager, any of its subsidiaries, or any business entity owned five % or more by Manager, or by any subsidiary of Manager, or by James B. Druck or by Jeffrey S. Halpern, shall not operate or participate in the operation of any other gaming facility

17.3 This Section intentionally deleted.

17.3.1 This Section intentionally deleted.

17.3.2 This Section intentionally deleted.

ARTICLE XVIII
FACILITY CONSTRUCTION AND FURNISHING

18.1 Initiation of Construction of the Gaming Facility. Upon receiving Project Approval, the Traditional Council shall cause the design, engineering and construction of the Gaming Facility to be initiated pursuant to the terms of this Agreement.

18.2 Architect, Engineering and Design. Manager and Tribe shall retain an architectural firm and a civil engineering firm to design the Gaming Facility, which architectural firm and civil engineering firm shall be subject to the approval of the Tribe.

18.2.1 Architectural, Engineering and Design Fees. The fees paid by Manager for the design and engineering of the Gaming Facility shall be financed through the Loan.

18.2.2 Applicable Standards. The design and construction of the Gaming Facility, including site development and water and sewage facilities, shall meet or exceed the more stringent of State or Federal standards which would apply if the Facility were to be built on lands subject to State or Federal regulatory jurisdiction.

18.2.3 Approval of Design. The Traditional Council shall approve of the architectural design and furnishing of any Gaming Facility located on tribal lands before construction or furnishing of the Facility is initiated.

18.2.4 Inspection. The Tribe may contract with appropriate agencies of the State of Texas or any private firm or entity to provide on-site inspection

during the construction of the Gaming Facility to ensure that the Facility is designed and constructed in compliance with the standards specified in Section 18.2.2, above, provided that nothing in this Section or elsewhere in this Agreement shall grant or convey to the State of Texas any jurisdiction over the design, construction or maintenance of the Facility.

18.2.4.1 Any cost incurred by the Tribe associated with having any person or entity inspect the design and construction of the Gaming Facility shall be an advance under the Loan.

18.3 General Contractor. Manager and Tribe shall jointly select a General Contractor.

18.3.1 Duties. The general contractor shall be responsible for supervising the construction of the Gaming Facility to insure that it is constructed in accordance with the plans and specifications which are provided by the architect pursuant to Section 18.2 and which are approved by the Tribe.

18.3.2 Assurance of Completion. The general contractor employed by the Tribe shall be required to, and shall, provide an assurance of completion acceptable to Tribe and Manager.

18.3.3 General Contractor's Warranties. The general contractor shall be required to, and shall, warrant the Gaming Facility to be free of all defects in materials and unworkmanlike labor for a reasonable period to be agreed upon by Manager and Tribe.

18.4 Fixtures, Furnishings and Equipment. Following a competitive solicitation of bids, the Manager or General Manager shall select a gaming-supply firm or firms to provide necessary gaming equipment, furniture, fixtures, furnishings, supplies and services to the Gaming Enterprise.

18.4.1 Concurrence of Manager. Manager shall notify the Tribe in writing of its proposed selection of a gaming supply firm or firms. Tribe shall have 20 days in which to file a written objection to the Manager's proposed selection(s), which objection shall specify with particularity the ground(s) for the Tribe's objection. Failure by the Tribe to file the written objection within 20 days shall be deemed to be the Tribe's concurrence in the Manager's selection of a particular gaming-supply firm or firms.

18.4.2 Gaming Supply Contract(s). Any contract for the provision of gaming-related equipment, furniture, furnishings, supplies or services to the Enterprise may provide for the Gaming Enterprise to lease or

purchase equipment, furniture, fixtures, furnishings, or supplies, at the option of Manager, subject to the approval of Tribe.

18.4.2.1 **Term.** No lease-type financing or installment loan contract for the purchase or lease of gaming-related equipment, furniture, fixtures, furnishings, supplies or services shall be for a term that exceeds the term of this Agreement.

18.4.2.2 **Audit.** Any one or more gaming-supply contracts for a contract amount in excess of $25,000 per year, except for contracts for legal or accounting services, shall be subject to the audit provisions of Section 7.3, above.

18.5 Arm's Length Transactions. All contracts contemplated hereunder relating to the development, construction and equipping of the Gaming Enterprise shall be reasonable and in accordance with industry standards established at arm's length. Manager shall not engage in any transaction with any affiliated entity in connection with this Agreement without first obtaining the prior written consent of the Tribe.

ARTICLE XIX
ADVANCES

19.1 Advances to Tribe. Manager shall make the following advances and payments to Tribe:

19.1.1

19.1.2

19.1.3 for architectural, engineering and construction costs (including on- and off-site utilities) incurred by the Tribe in connection with the relocation of its 20 Low-Income Dwelling Units housing project;

19.1.4 which is to be used, as may be required, to provide quality housing for members of the Tribe who currently reside on or near the Property and who may be displaced by the development of the Gaming Facility; and

19.1.5 The amounts referred to in various other Sections of this Management Agreement which are identified as advances under the Loan.

19.2 Treatment of Advances and Payments.

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ARTICLE XX
NOTICES

20.1 Address to Which Notices Must be Sent. Any notice required to be given under the terms of this Agreement shall be mailed or delivered to the following addresses:

To the Tribe:

Kickapoo Traditional Tribe of Texas
P. O. Box 972
Rosita Valley Road
Eagle Pass, Texas 78852

Attention: Roberto de la Garza, Tribal Administrator

To the Manager:

Southwest Casino and Hotel Corp.
2001 Killebrew Drive, Suite 345
Minneapolis, Minnesota 55425

Attention: James B. Druck, President

Where any notice is required to be given to the Commission under the terms of the Act or pursuant to this Agreement, to the Commission:

National Indian Gaming Commission
1441 L Street NW, Ninth Floor
Washington, D. C. 20005

Attention: Michael Cox, General Counsel

20.2 Form of Notice. Any notice required to be given under the terms of this Agreement shall be in writing and shall be sent by certified mail.

20.3 Change of Address. If the address of any party shall change, that party shall send a notice of the change of address to the other parties.

> **20.3.1 Effective Date of Change of Address.** Any change of an address shall become effective immediately upon the parties' receipt of the notice of change of address, unless such notice specifies a future date upon which the change is to take effect, in which case the future date specified in the notice shall be the date upon which the change of address becomes effective.

20.4 Approvals. Wherever a party is required to approve a matter hereunder, notice of such approval or disapproval shall be given to the other party in writing within 20 days (or such other period as may be specified herein). The failure of any party to timely provide the required notice to the other party shall be deemed that party's approval of the matter.

ARTICLE XXI
PROHIBITION AGAINST INTERFERENCE IN TRIBAL GOVERNMENT

21.1 Non-Interference. Manager, its agents and employees shall not interfere or attempt to interfere, in any way, with the governmental affairs of the Tribe and Manager shall not influence or attempt to influence any decision or process of the Tribe or tribal government relating to the Gaming Enterprise, including the Gaming Operation.

21.2 Gifts. Manager, its agents and employees shall neither offer nor tender any gift, reward, remuneration or any thing of value to any employee or agent of the Tribe, to any member of the Traditional Council, or to any person residing in the same household as a member of the Traditional Council or tribal employee or agent, or to any person related to a member of the Traditional Council or to a tribal employee or agent within the second degree of affinity or consanguinity provided that nothing in this Section shall prohibit, or shall be interpreted as prohibiting, Manager from reimbursing the Tribe for expenses incurred by the Traditional Council, any tribal employee, or any agent of the Tribe in fulfilling their responsibilities under this Agreement or for engaging in activities related to the negotiation and administration of this Agreement or any Compact.

> **21.2.1** For purposes of this Article, "person residing in the same household" shall mean any person who lives in the same dwelling and "Person related . . . within the second degree of affinity or consanguinity" shall mean a mother, father, sister, brother, daughter, son, aunt, uncle, niece, nephew or first cousin, whether related by blood or by marriage.
>
> **21.2.2** For purposes of this Article, "any thing of value" shall mean any good or service whose fair market value exceeds $10 or any combination of

goods or services, the annual aggregate fair market value of which exceeds $20.

21.3 Employment. Manager shall not employ any employee or agent of the Tribe, or any member of the Traditional Council, or any person residing in the same household as a member of the Traditional Council, or any person related to a member of the Traditional Council within the second degree of affinity or consanguinity provided that nothing in this Section shall prohibit, or shall be interpreted as prohibiting, any member of the Traditional Council or any person residing in the same household as a member of the Traditional Council or any person related to a member of the Traditional Council from being employed by the Gaming Operation and/or Gaming Enterprise.

21.4 Financial Interest in Manager. Manager shall not permit any employee or agent of the Tribe, or any member of the Traditional Council, or any person residing in the same household as a member of the Traditional Council, or any person related to a member of the Traditional Council within the second degree of affinity or consanguinity to obtain, directly or indirectly, a financial interest in Manager or in any subsidiary company or venture owned, in whole or in part, by Manager or by a principal of Manager, provided that nothing in this Section shall prohibit any person from purchasing shares in Manager in the public marketplace.

21.5 Penalty for Violation. Should Manager, its agents or employees violate any provision of this Article, this Agreement, and Tribe's obligations and Manager's rights thereunder, shall immediately cease and the Gaming Enterprise, Gaming Facility and Gaming Operation, and all furniture, furnishings, fixtures and supplies thereof, shall be distributed to the Tribe. Manager immediately shall be relieved of its right and responsibility to manage the Gaming Operation, Gaming Facility and Gaming Enterprise and Tribe immediately shall operate the Gaming Facility, subject to the Loan Documents which shall survive.

ARTICLE XXII
MISCELLANEOUS PROVISIONS

22.1 Warranties and Representations. The Manager and Tribe mutually warrant and covenant that they will take no inappropriate action, nor fail to take appropriate action, to secure the approval of this Agreement by the Commission. No party shall alter or attempt to alter the terms of this Agreement without the written consent of the other party.

22.2 Conveyance of Land. Nothing in this Agreement shall convey or shall be deemed to convey any interest in tribal lands to Manager.

22.3 Recordation. [This Section intentionally deleted].

22.4 No Partnership. Nothing in this Agreement shall create or shall be deemed to create a partnership between the Manager and the Tribe.

22.5 Execution In Multiples. This Agreement shall be executed in five originals, one copy to be retained each by Tribe and Manager and three copies to be presented for review by the Commission. Each original shall be as valid as any other original.

22.6 Parties in Interest. Attached to this Agreement as Exhibit D, and incorporated herein by reference, is a list of the "parties in interest" to this Agreement, including: (1) each person who shall have management responsibility for the Gaming Operation; (2) each person who is a director of Southwest Casino and Hotel Corp.; (3) the ten largest shareholders of Manager; (4) all stockholders of Southwest Casino and Hotel Corp. holding five% or more of the stock of the corporation; and (5) any person or entity with a direct or indirect financial interest in this Agreement not set forth above. Manager shall add to the list of "parties in interest" any person with a direct or indirect financial interest in this Agreement otherwise designated by the Commission or Tribe.

22.6.1 Manager shall ensure that each such person listed as a "party in interest" shall provide to the Commission the information required by 25 C.F.R. Section 537.1 and that each such person shall cooperate fully with the Commission in providing any information required by the Commission in fulfilling its obligations under 25 C.F.R. Part 537.

22.6.2 Manager shall notify the Tribe and the Commission within 10 days of the addition of a "party in interest" or within 10 days of becoming aware of a "party in interest", whichever occurs later, which notice shall contain the information required by 25 C.F.R. Section 537.1. Manager shall ensure that each added "party in interest" cooperates fully with the Commission in providing any information required by the Commission in fulfilling its obligations under 25 C.F.R. Part 537.

22.6.3 Pursuant to and in accordance with 25 C.F.R. Part 537, Manager shall be solely responsible for the costs of any background investigation of a "party in interest", which costs shall be an advance under the Loan.

22.6.4 Should Manager fail to notify the Tribe and Commission of any addition of a "party in interest" within (i) the 10-day period prescribed in Section 22.6.2, above, and 25 C.F.R. Section 537.2(b), or (ii) 10 days after Manager becomes aware of a "party in interest", whichever comes later, or should Manager or its principals provide any false statement or information pursuant to this Section or 25 C.F.R. Part 537, or should Manager or its principals fail to provide the information required by this Section or 25 C.F.R Part 537, or should Manager fail or refuse to divest any "party in interest" of his or her financial interest in Manager after said person has been disapproved by the Commission, Manager's right to manage the Gaming Operation shall cease and Tribe shall operate the Gaming Operation thereafter, subject to the Loan Documents which shall survive.

22.7 Disapproval by Commission. Should the Commission fail to approve this Agreement for any reason, the parties shall be relieved of their rights and obligations hereunder and this Agreement shall be void; provided however that the Tribe shall not be required to repay to Manager any sums advanced to the Tribe hereunder before the date of disapproval.

22.8 Entirety of Agreement. This Agreement represents the entire agreement between the Tribe and Manager for the management of gaming operations on tribal lands and supersedes and replaces any other agreements, whether written or oral, that may have been entered into between the parties.

22.9 Amendment of Agreement. This Agreement may not be modified, amended, altered or supplemented without the prior written consent of the parties and the approval of the Commission.

22.10 Severability. Should any federal agency or court of competent jurisdiction determine that any provision of this Agreement is unlawful or unconstitutional, such determination shall not affect the remaining provisions, and this Agreement shall remain in full force and effect except for the provision that was determined to be unlawful or unconstitutional.

22.11 Tribal Gaming Ordinance(s). The Traditional Council shall promulgate and enact a Tribal gaming ordinance(s) and shall submit such ordinance(s) to the Commission for approval. The gaming ordinance(s) shall govern the conduct of Gaming on tribal lands. The gaming ordinance(s) shall be reasonable and consistent with ordinances which govern the regulation of gaming facilities generally and shall not contain any provision which is materially inconsistent with this Agreement.

22.12 Quarterly Meetings. Manager shall meet with the Traditional Council at the Gaming Facility not less frequently than quarterly to discuss the Gaming Facility, Gaming Operation, Gaming Enterprise and all related matters.

22.13 Primadonna Resorts, Inc./Conditional Prior Approval. Primadonna Resorts, Inc., has expressed an interest in providing funds and management services together with Southwest Casino and Hotel Corp. in a joint venture arrangement to assist the Kickapoo Traditional Tribe of Texas in the development of Class II and Class III gaming. Primadonna Resorts, Inc., had previously sought to acquire a preferred stock interest in Southwest Casino and Hotel Corp. in addition to its joint venture interest in the Kickapoo contract. To expedite approval and opening of the Kickapoo facility, Primadonna Resorts, Inc., has converted its preferred stock interest in Southwest Casino and Hotel Corp. to a loan. The loan has a conversion feature which permits it to be converted to common stock at some time in the future, at the option of Primadonna Resorts, Inc., but only if and after the National Indian Gaming Commission has completed all necessary background checks and has provided all required approvals. Primadonna Resorts, Inc., has also agreed with Southwest to provide funds directly to Southwest Casino and Hotel Corp. rather than in the form of a joint venture

or direct advance to the Kickapoo Traditional Tribe of Texas. The Tribe hereby consents to the future admission of Primadonna Resorts, Inc., as a party-in-interest in Southwest, and further consents to a joint venture arrangement with Primadonna Resorts, Inc., for subsequent development activities, on terms and conditions acceptable to the Tribe, Southwest, and Primadonna, provided however that the foregoing consents are subject to the prior approval and consent of the National Indian Gaming Commission.

ACKNOWLEDGEMENT

The Kickapoo Traditional Tribe of Texas, acting by and through its delegated representative as evidenced by Resolution No. KTTT 96-005, attached hereto as Exhibit E and incorporated herein by reference, and **Southwest Casino and Hotel Corp.** by its President and Chief Executive Officer, hereby agree to the foregoing First Amended Management Agreement for the Conduct of Class II Gaming on the Kickapoo Village Indian Reservation with an effective date as defined in Article X hereof.

IN WITNESS WHEREOF, we hereby set our hands.

KICKAPOO TRADITIONAL TRIBE OF TEXAS

Date: 4/17/96

By _____
Its Chairman of the Traditional Council

On this 17th day of April, 1996, Raul Garza did appear before me and did affix their signatures to the above.

_____
Notary Public

My Commission Expires: 12-13-98

MARGARITA SALAZAR
MY COMMISSION EXPIRES
December 13, 1998

SOUTHWEST CASINO AND HOTEL CORP.

Date: 4/18/96

By _____
Its President

Date: 4/18/96

By _____
Its Chief Executive Officer

On this 18th day of APRIL, 1996, JAMES B. DRUCK and JEFFREY S. HALPERN did appear before me and did affix their signatures to the above.

_____
Notary Public

My Commission Expires: 1/31/2000

JANET S. SMITH
Notary Public - Minnesota
My Commission Expires 1/31/2000

Harold A. Monteau
Chairman, National Indian Gaming Commission
MAY 29 1996