THIRD AMENDED AND RESTATED EXCLUSIVE OPERATING AGREEMENT

THIS THIRD AMENDED AND RESTATED EXCLUSIVE OPERATING AGREEMENT ("Agreement") between the Muckleshoot Indian Tribe, a federally recognized Indian tribe ("Tribe") on the one hand, and Capital Gaming Management, Inc. formerly British American Bingo, Inc., a New Jersey corporation ("Capital Management"), and Capital Gaming International, Inc., a New Jersey corporation ("Capital Gaming") (Capital Management and Capital Gaming collectively "Capital") on the other hand (jointly and severally, the "Parties"), is made and entered into on and as of the 24th day of April, 1995, in the State of Washington.

Recitals

A. **Purpose.** The purpose of this Agreement is to amend and restate the terms and conditions of the Second Amended and Restated Exclusive Operating Agreement between the Parties, dated March 17, 1995, wherein Capital agreed to provide to the Tribe exclusive operating services, gaming expertise, observations, guidance and suggestions in order to operate the gaming and related business activities on Tribe's reservation in the State of Washington (the "Reservation") in a gaming facility.

B. **Parties.**

1. Tribe. Tribe is a federally recognized tribe eligible for the special programs and services provided by the United States for Indian Tribes because of their status as Indian Tribes.

2. Capital Management/Capital Gaming. Capital Management is incorporated under the laws of the State of New Jersey and is a wholly owned subsidiary of Capital Gaming, a publicly held New Jersey Corporation. Capital Management and Capital Gaming have been approved as financing and gaming expertise resources to the Tribe by the Washington State Gambling Commission. Capital Management and Capital Gaming have also been issued an interim license by the Tribe's Gaming Commission to participate in gaming in the manner described herein. Capital has the ability and desire to construct a gaming facility on the Reservation, including buildings, parking lots and appurtenances as more particularly described hereunder, and to furnish and equip the facility (hereinafter the "Facility" or the "Project"), and generally make such other preparations as will enable the Tribe to receive, upon

completion of Capital's performance hereunder, a "turn-key" facility and business operation capable of engaging in Class II and III gaming under the Federal Indian Gaming Regulation Act, as amended (25 U.S.C. §2701, et seq.), and the regulations thereunder ("IGRA") and the Compact (hereinafter defined), as amended from time to time. Capital also has the ability and desire to operate on an exclusive basis, the Facility for the Tribe.

C. **Nature Of Agreement.** This is an agreement for construction, pre-opening and exclusive operation of the Facility by Capital, under the terms and conditions set forth herein, and governs the responsibilities and relationship of Capital and Tribe with respect to the Facility and each other during the Term of this Agreement. This Agreement is intended to be in compliance with all applicable laws and shall be so construed by the Parties. This Agreement is also intended to satisfy Capital's obligations as set forth in that certain Indenture Agreement dated February 17, 1994. The services to be provided by Capital are of a personal nature only and do not confer on Capital any right, possessory or otherwise, to any of Tribe's land, nor does it affect such land. Tribe's authority to enter into this Agreement is derived from Tribe's general powers to do business, and under the Indian Gaming Regulatory Act (25 U.S.C. §2701, et. seq.; "IGRA"), or any other law.

D. **Approvals.** The Parties shall seek approval of this Agreement from the Commission, pursuant to IGRA and will file a notice copy with the Washington State Gambling Commission if required by law. This Agreement has been approved by the Tribe's Tribal Council, a unanimous resolution of which is attached hereto as Exhibit "A."

E. **Tribal-State Compact.** The Tribe is a signatory to a Tribal-State Compact with the State of Washington dated February 19, 1993, which has been approved by the Secretary of the Interior and published in the Federal Register in accordance with IGRA (the "Compact"). The Compact is presently in effect. This Agreement is intended to confer on Capital the exclusive right to operate pursuant to the terms of this Agreement any future Class III gaming activities during the term (except for Off-Track Betting and horse racing conducted at another facility on the Reservation), as a result of (i) any amendments to IGRA, (ii) any amendments to the existing Compact, (iii) any new Compact between the Tribe and the State of Washington relating to gaming or (iv) any judicial interpretation that expands the type and scope of Class II gaming (except for gaming which is the subject of the Bingo Agreement between Capital and the Tribe) or Class III gaming during the term, (except for Off-Track Betting and horse racing conducted at another facility on the Reservation), which shall be allowed on the

Reservation. Furthermore, the Tribe specifically acknowledges that slot machines or video gaming devices or any other form of mechanical gaming, or facsimile thereof, are covered by this Agreement to the extent permitted by law.

F. **Description of Gaming Facility.** The facility and enterprise which is the subject of this Agreement shall consist of a structure of approximately 40,000 square feet with appropriate space therein for Class II and Class III gaming, food and beverage outlets, retail space, entertainment areas, and administrative and back-of-the-house facilities. The facility shall also include adjacent parking and circulation areas. Except as provided in the immediately succeeding sentence, all references to the "Facility" or the "Project" in this Agreement shall be to the above-described facility and the business carried on therein or the Interim Facility (as defined below) if the context so requires. The parties hereto recognize that pursuant to Section 23 hereof, an interim facility will be established prior to the opening of the permanent Facility. The interim facility shall consist of approximately 13,800 square feet, contain gaming areas, food service and administrative facilities necessary to conduct the gaming activities to be carried out therein and shall be located as set forth on the Site Plan annexed hereto as Exhibit D (the "Interim Facility"). The Facility shall be located on Reservation lands held in trust for the Tribe by the United States and which are under the control and jurisdiction of the Tribe, and shall be eligible for the conduct of Class II and III gaming pursuant to IGRA and the Compact as IGRA and the Compact may be amended. This Agreement shall relate to gaming at the Interim Facility and Facility.

G. **Tribal Gaming Ordinance; Tribal Gaming Commission.** Tribe has enacted and has obtained federal approval of a gaming ordinance in accordance with IGRA ("Ordinance"). The Ordinance permits the Tribe to conduct gaming and related activities on its Reservation ("Gaming Activities"). All services to be rendered herein shall be in accordance with the Ordinance. Pursuant to the Ordinance, the Tribe has constituted a Tribal Gaming Commission, which shall exercise those tribal governmental regulatory functions, including licensing and background investigations, required of the Tribe under IGRA, the Ordinance, and the Compact.

H. **Funding Agreement.** The parties have entered into an Amended and Restated Funding and Loan Agreement ("Funding Agreement") wherein Capital has agreed to provide the Tribe, either directly or indirectly, with funding for construction and operation of the Facility and other purposes referred to therein.

I. **Closing.** The parties hereto expressly agree and acknowledge that the Closing shall take place on or before 11:59 p.m. East Coast Time on Monday, August 1, 1994 but shall be deemed to be effective as of 11:59 p.m. on July 31, 1994, and shall be defined as the date and time at which all Project Documents excluding the Funding Agreement (as defined below) have been delivered as well as the payments set forth in Section 2.1, 2.2 and 2.3.

J. **Incorporation of Terms in Letter Agreement.** The parties hereto expressly agree and acknowledge that the terms of a certain July 29, 1994 Letter Agreement by and among the Tribe and Capital shall hereby be incorporated by reference into this Agreement and to the extent of any conflict between the terms of the Letter Agreement and this Agreement, this Agreement shall prevail. Notwithstanding anything to the contrary contained in the Letter Agreement, Capital shall not be involved in the management of the Interim Facility or Facility until this Agreement has been approved by the NIGC.

K. **No Transfer or Conveyance.** The Tribe and Capital expressly agree and acknowledge that neither this Agreement nor the Funding Agreement, the Letter Agreement dated July 29, 1994 or the Consent to Pledge and Assignment create any transfer or conveyance of an interest in land of any nature whatsoever.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference and agreed upon by the Parties, and the mutual covenants contained herein, and for other valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1.0 **Capital's Services.** Pursuant to this Agreement, Tribe will exclusively retain and engage Capital to construct, outfit, develop, operate and maintain the Project in accordance with the Compact for those gaming activities authorized by the Compact, as well as any gaming activities permitted by 25 U.S.C. §2703(7)(A)(ii) of IGRA, as amended, and to operate, maintain and promote such incidental uses to, or customarily related to such use, including, without limitation, operation of concessions within the Project for the sale of food, beverages and services, and the sale and rental of merchandise. All gaming covered by this Agreement and Capital's services hereunder shall be conducted in accordance with and governed by IGRA, applicable Tribal ordinances, laws and regulations, and the Compact. **[§531.1(a)]** Maintenance and supervision of parking areas will be coordinated with the Tribe

taking into account that the Class II parking and other Tribal Activities may be shared with the Facility.

2.0 **Payments To Or On Behalf Of Tribe.** Capital shall pay to or on behalf of Tribe, in consideration of its execution of this Agreement, the following amounts:

2.1 Signing Bonus. At Closing, Capital shall deliver to Tribe, as a non-refundable and non-recoupable Signing Bonus, the sum of

2.2 Monthly Stipends. A monthly stipend of payable on the first of each and every month commencing July 1, 1994, and continuing through the first month in which the Interim Facility is open to the public, except that the stipend shall be reduced to per month commencing with the payment due on January 1, 1995. At the Closing, Capital shall make the July 1 and August 1 payments. In the event a Finding of No Significant Impact ("FONSI") is not obtained by Capital with respect to the Facility on or before December 1, 1994, and the delay is not due to (i) delays caused by lack of cooperation by the Tribe with Capital or its environmental consultant in providing information or approvals or otherwise, or (ii) other events outside the control of Capital, both the December 1 and the following January 1, 1995 reduced payment of shall be due on December 1, 1994 rather than on January 1, 1995. All monthly stipends shall be non-refundable and non-recoupable.

2.3 Legal Fees. All Tribal legal fees incurred in connection with Class III gaming after 11:59 p.m. East Coast time on Monday, August 1, 1994 and prior to the Commencement Date shall be treated as pre-opening expenses. Legal fees paid to Levine & Associates on or after August 1, 1994 and prior to the execution of this Agreement shall be repaid Pre-Closing Expense Allowance described in the Funding Agreement.

2.4 Tribal Loans. Capital shall loan Tribe the following amounts, which shall be repayable under the terms of the Funding Agreement:

2.4.1 Commencing within three (3) business days following the availability of funding from the Cash Collateral Account, up to per month for pre-operating expenses. In the event that the per month amount may not be withdrawn from the Cash Collateral Account, Capital agrees to advance this loan out of working capital, but no sooner than funds would generally be available under the Cash Collateral Account;

2.4.2 Commencing within three (3) business days following the availability of funding from the Cash Collateral Account, of the Tribal Gaming Commission budget, not to exceed per month, and continuing until the Interim Facility has been open for a full month. In the event that the per month may not be withdrawn from the Cash Collateral Account, Capital agrees to advance this loan out of working capital, but no sooner than funds would generally be available under the Cash Collateral Account;

2.4.3 Sufficient funds, as determined by the JAC, as may be necessary to construct, furnish, equip and operate the Facility in accordance with this Agreement and the Funding Agreement. Tribe agrees and acknowledges that (i) the amounts set forth in Section 2.1 and 2.2 as well as the Pre-Closing expense allowance of (ii) the loans being made pursuant to paragraph 12(a) and (b) of the Letter Agreement, and (iii) the amount loaned to the Tribe for purposes of establishing an Interim Facility as provided in Section 2.4.4 below shall reduce the amount of funds available for the construction, furnishing, equipping and operating this Facility in accordance with this Agreement and the Funding Agreement. The Tribe agrees to cooperate in assisting in the release of any funding from the Cash Collateral Account. Notwithstanding the above, Capital shall fund such costs as are necessary in the event funds are not available from the Cash Collateral Account through no fault of Tribe.

2.4.4 Sufficient funds as may be necessary to purchase certain furniture, fixtures and equipment for the Interim Facility, provided that such funds are used for furniture, fixtures, equipment and other property which is subsequently utilized in the permanent Facility. The Tribe agrees to cooperate in assisting in the release of any such funding from the Cash Collateral Account.

2.4.5 The maximum amount which Capital shall be obligated to lend to the Tribe pursuant to this Agreement and the Funding Agreement shall be , which is the maximum amount of development and construction costs which Capital may recoup under this Agreement. [§531.1(g)].

3.13 "Gaming Ordinance" shall be as defined in Recital G of this Agreement.

3.14 "General Manager" shall be the person selected by Capital and approved by the Tribe to serve as General Manager. The General Manager shall report to the Tribe (as defined herein). Steven Griffiths is hereby approved as General Manager to serve under an employment agreement with the Tribe (which shall be his sole source of compensation with respect to the Facility or Project). The terms of the employment agreement are to be recommended by Capital and subject to approval by the Tribe. Whenever a duty or responsibility is assigned to the General Manager herein it shall be deemed to be the duty and responsibility of the Tribe.

3.15 "Government Agencies" shall mean any government, whether national, foreign, state, local or tribal, and any instrumentality, authority, subdivision, or agency thereof.

3.16 "Gross Gaming Revenues" means all cash or other consideration received from any gaming activity associated with the Facility after payment of prizes and other winnings and any taxes or assessments imposed on gross revenues by Law subject to and in accordance with Generally Accepted Accounting Principles ("GAAP").

3.17 "Gross Non-Gaming Revenues" shall mean all cash or other consideration received from non-gaming sources, such as receipts from the sale of food, beverages, souvenirs, clothes, books and periodicals and related products (including permitted sales of alcoholic beverages and cigarettes), and parking fees, if any, all in accordance with GAAP.

3.18 "IGRA" shall be as defined in Recital B of this Agreement. It shall also be deemed to refer to any successor statues or amendments and shall include any regulations of the National Indian Gaming Commission which implement IGRA.

3.19 "Interim Facility" shall be defined as in Recital F of this Agreement.

3.20 "Gaming Operating Expenses" shall be defined as all sums incurred in the generation of Gross Gaming Revenues in accordance with GAAP. Such expenses shall include depreciation and interest charged on any loans hereunder and under the Funding Agreement. Allocations of expenses to Gaming and Non-Gaming activities shall be determined in accordance with GAAP. Any allocation methodology must be approved by the JAC. The Tribe and Capital hereby expressly agree and acknowledge that all reasonable Tribal Gaming Commission expenses from and after the date the

Interim Facility is first opened to the public shall be expressly included in the calculation of Gaming Operating Expenses, excluding salaries, benefits, travel and entertainment overhead, not directly related to performance of the regulatory functions.

3.21 "JAC" shall be as defined in Section 5.2 of this Agreement.

3.22 "Law" shall be defined, collectively, as all applicable federal, state tribal and local statutes, constitutions, charters, treaties, rules, regulations, ordinances, codes, court or administrative orders and administrative or judicial precedents. Without limiting the foregoing, it shall include any Tribal-State Compacts, the Tribe's Gaming Ordinances and IGRA.

3.23 "Net Gaming Revenues" shall be defined as Gross Gaming Revenues less Gaming Operating Expenses.

3.24 "Non-Gaming Operating Expenses" shall be as determined by the JAC, subject to and in accordance with GAAP.

3.25 "Net Non-Gaming Revenues" shall be defined as the excess, if any, of Gross Non-Gaming Revenues over Non-Gaming Operating Expenses.

3.26 "Project Documents" shall be defined as this Agreement, the Funding Agreement, the Letter Agreement by and among Capital, Capital and the Tribe dated July 29, 1994, the Consent to Pledge and Assignment dated as of July 31, 1994, the Tribal Council Resolutions authorizing any transactions contemplated by this Agreement, originals of the Environmental Assessment files as well as the Tribal Interim License.

3.27 "Reservation" shall be those lands within the Muckleshoot Reservation and over which the Tribe exercises governmental jurisdiction.

3.28 "Security Agreement" shall be defined as that separate agreement securing the Funding Agreement and entered into herewith.

3.29 "Term" shall be as defined in Section 4.0 of this Agreement.

3.30 "Tribe" shall be as defined in the introduction to this Agreement.

4.0 **Term.** This Agreement will commence on the date this Agreement receives NIGC approval ("Commencement Date") and terminate on midnight of the last day of a period ending five (5) years after the Commencement Date if the Tribe has received sufficient funds from the Tribe's share of Net Gaming Revenues (less the Guaranteed Draw Payments) ("Sufficient Funds") to repay its obligations under the Funding Agreement. If the Tribe has not received Sufficient Funds by such date, then the Term of this Agreement shall be extended until midnight of the date such Funding Agreement obligations have been satisfied, or until midnight of the last day of a period ending seven (7) years after the Commencement Date, which ever first occurs. **[§531.1(h)]** In no event shall the Term exceed the maximum term permitted by Law, if any. Tribe agrees not to adopt any law or resolution which imposes a limitation on agreements with the Tribe which is in conflict with this Section 4.0.

5.0 **Management Responsibilities of Parties.**

5.1 Allocation of Management Responsibility. The responsibility to comply with certain identifiable functions relating to the operation of the Project is allocated between Capital and the Tribe as set forth below:

5.1.1 Capital shall have the responsibility for the following Management functions:

5.1.1.1. If applicable, supplying the NIGC with all information necessary for the NIGC to comply with the regulations of the NIGC issued pursuant to the National Environmental Policy Act **[§531.1(b)(16)]**.

5.1.1.2. Complying with all applicable provisions of the Internal Revenue Code **[§531.1(b)(14)]**.

5.1.1.3. Selecting both the initial and any subsequent employees to serve as the General Manager, Casino Manager, Chief Financial Officer, Controller, Director of Human Resources and Director of Marketing (the "Key Employees") for the Facility subject to approval of the Tribe, which persons shall be employed by the Tribe.

5.1.1.4. Provision of Operating Capital (through Funding Agreement) **[§531.1(b)(2)]**.

5.1.1.5 Provide the Tribal Council, not less frequently than monthly, financial reports, or all information necessary to prepare such reports. **[§531.1(d)]**

5.1.2 The Tribe shall have Management responsibility for the following functions:

5.1.2.1 Maintaining and improving the gaming facility [§531.1(b)(1)].

5.1.2.2 Establishing operating days and hours [§531.1(b)(3)].

5.1.2.3. Maintaining the operation's books and records [§531.1(b)(5)].

5.1.2.4 Paying Bills and Expenses [§531.1(b)(11)].

5.1.2.5. Establishing and Administering Employment Practices [§531.1(b)(12)].

5.1.2.6. Selecting an independent auditor, the cost of which will be paid by Tribe and considered an operating expense [§531.1(b)(7)].

5.1.2.7. Hiring, firing, training, supervising and promoting employees (except for the CFO), including security personnel (acting through the Tribe's employee, the General Manager, who is delegated this authority by the Tribe) [§531.1(b)(4) and (b)(8)].

5.1.2.8 Setting the Advertising Budget and placing advertising [§531.1(b)(10)].

5.1.2.9 Providing fire protection services and paying the cost of any increased public safety services. Such costs shall be an operating expense. [§531.1(b)(9)&(15)]

5.1.2.10. Preparing the operation's financial statements and reports [§531.1(b)(6)].

5.2 Formation of JAC. Within ten (10) days after the execution of this Agreement, a Joint Advisory Committee shall be formed consisting of up to three (3) representatives to be selected and subject to removal and replacement by the Tribe and up to three (3) representatives to be selected and subject to removal and replacement by Capital (the "JAC"). None of such persons shall be persons who would have caused this Agreement to be disapproved under the standards of IGRA as finally determined by the NIGC. Regardless of the number of representatives a party has to the Committee, each party (i.e., Tribe and Capital) shall have only one vote. The Project shall not be responsible for the payment of any

compensation to the members of the JAC and any such compensation, if paid by either party, shall not be an operating expense. Neither the General Manager nor the attorney for either party (i.e., Tribe and Capital) are eligible to sit on the JAC.

5.3 Meetings of JAC. The JAC shall meet and confer on a regular basis in order to be informed of developments pertinent to the Project. The General Manager shall be present at each meeting. At any time this Agreement requires the JAC to meet, such meetings may be held by telephone conference, if reasonably feasible to do so. All meetings shall be on reasonable notice to JAC members. At least one representative of each party must be present for JAC action to be valid.

5.4 Function of JAC. All relevant information concerning the exercise of the Management functions set forth in 5.1 above and any other matter (other than day-to-day operations) affecting the Project shall be reported at the regular JAC meetings. If either party objects to any management decision made by the other party, the matter shall be referred to the JAC for resolution. In the event the JAC is unable to resolve the issue after good faith efforts, the matter shall be subject to arbitration pursuant to the terms hereof.

5.5 Tribal Matters. Notwithstanding anything else in this Agreement to the contrary, Tribe shall have the exclusive right to make decisions and take action on behalf of Tribe or the Facility with respect to the following matters:

5.5.1 Any matters that reflect on the honesty, integrity or reputation of the Tribe or the Facility or any part thereof;

5.5.2 Any matters related to the legal interests or affairs of the Tribe, including the right to select legal counsel and provide direction in connection therewith; and

5.5.3 Any matters relating to the Tribe's or Facility's relationships with the City of Auburn, County of King, State of Washington, and United States Government (including any agency thereof such as the BIA or NIGC), and including, but not limited to, all matters relating to permits, licenses, taxes, investigations or approvals.

5.6 Capital's Right to Independent Audit. Notwithstanding anything to the contrary contained in this Agreement, Capital shall maintain at all times the right to cause an independent audit of the books and records of the Facility (at its own expense) by an accounting firm designated solely by Capital.

5.7 Agreement as to Chief Financial Officer and Controller. Capital Gaming will select at its sole expense a Chief Financial Officer (CFO) who will have a two (2) year contract and will report to the General Manager. The CFO will be considered a Tribal employee. For so long as the Capital designee shall serve as CFO, Tribe shall deduct from Capital's Fee on a monthly basis all the direct costs of the CFO, including but not limited to, his salary, benefits and travel and other costs. The CFO will provide direct line supervision to all Finance Department personnel, including the Controller.

is hereby approved as to serve under an employment agreement with the Tribe (which shall be his sole source of compensation with respect to the Facility or Project). The terms of the employment agreement are subject to approval by the Tribe, provided it is agreed that shall hold the position for three (3) years with an initial salary of and applicable benefits. will be a Facility employee and will report directly to the CFO. Capital will endeavor to recommend when, with the concurrence of the Tribe, he has acquired the necessary experience. will have access to any and all records the CFO has access to.

6.0 **Construction Matters and Conditions.**

6.1 Plans and Specifications. Capital shall have the right to designate and engage, at Capital's cost and expense to be reimbursed as part of the Loan, such architects, engineers, contractors and designers as shall be necessary to prepare all site plans, grading plans, construction drawings, surveys, materials, specifications, architectural plans and drawings, elevations, construction models, engineering plans and drawings, plats and others plans, drawings, studies or reports of any nature related to the construction of the Facility (the "Plans and Specifications") and to the furniture, furnishings and equipment ("FF&E") of the Facility (the "FF&E Specifications"). Capital will give due and fair consideration to qualified Tribal Members for such professionals (except for the environmental consultant). The Tribe and Capital agree that the final decision with respect to accepting Capital's designees shall be made by the JAC and in no event not later than five (5) days following the submission of Capital

designees for these positions in writing to the JAC. Any decision by the JAC to refuse to accept the designees of Capital shall be based upon commercially reasonable grounds which will give due and fair consideration to the desire of both the Tribe and Capital to open the Facility on or about April 30, 1995. Capital shall render to the JAC a monthly report which shall give a status of the construction. Such FF&E Specifications shall cover all furniture, furnishings, and equipment necessary or appropriate to operate the Facility in conformity with this Agreement. FF&E shall bear the name or identifying characteristic of the Facility wherever possible. The various components of the Plans and Specifications (i.e., conceptual, preliminary and final plans) shall be prepared and delivered to the JAC for its review and approval. All approvals shall be given promptly and in any case within ten (10) business days after submission of any request. Any disputes that cannot be resolved by consultation between the parties shall be resolved by arbitration as provided in Section 19 of this Agreement. After approval by the JAC, Capital may recommend, for the JAC's review and approval, such further material changes in the final Plans and Specifications as are necessary to meet problems that may arise during the periods of constructing, furnishing and equipping the Facility. Capital may make reasonable changes in its own discretion without JAC approval, however, Capital will make a reasonable effort to assure that the JAC will be informed of such changes. In order to carry out such construction, Capital shall recommend to the JAC a construction supervisor for the Project whose salary shall be an operating expense of the Project, and in addition thereto, shall consult with the General Manager in planning and supervising the gaming related aspects of planning, constructing and equipping the Facility.

6.2 Bidding Policy Regarding Construction Contracts. Capital shall select construction firms to build and outfit the Facility in accordance with the policies and plans and specifications approved by the JAC. Such policies shall take into account the reputation and personal histories of any companies or their employees, and shall require that all contractors required by the laws of the State of Washington be so licensed and bonded. The terms and conditions of such contracts shall be subject to the JAC's approval. Except for the General Contractor or Construction Supervisor, whenever possible, preference will be given to qualified Tribal, and then local, subcontractors and suppliers; provided, however, bids shall be awarded to bidders who are the most competitive, responsible and qualified. Bidding need not be by sealed bid. Stop work orders may only be issued by the JAC.

6.3 Permits and Approval. Tribe shall cooperate with and assist Capital in obtaining any and all such permits or approvals, if any, which may be required by law. Except as

provided in the Ordinance, no permit from the Tribe is or will be required with respect thereto and Tribe shall not impose any fees, taxes or charges or any rules, ordinances (including Gaming Ordinances), zoning laws, or other Tribal regulations which are applicable thereto. No permits or approvals from Tribe shall require the payment of any fees.

6.4 Agreements for Utility Facilities. The JAC shall have the authority to negotiate agreements with public utility companies to provide utility services necessary for the full development and enjoyment of the Facility as contemplated under this Agreement, and with the written consent of the Tribe. All such agreements shall be in the name of the Tribe.

6.5 Surveys and Other Studies. Capital may perform or contract for the conduct of any surveys, soils investigations, geological inspections and other tests and investigations ("Investigation") and other forms of approval or permission which may be required in order to construct or operate the Facility on the site as may be reasonably necessary to perform the preparation and construction in a safe and sound manner, and in conformity with applicable Law.

6.6 Site Work and Construction Schedule Requirements.

6.6.1 Start Date for Construction. Capital agrees to commence the preparation of Plans and Specifications and the FF&E Specifications immediately after execution of this Agreement and its submission to the NIGC, and after meeting and conferring with the JAC and receiving its direction as contemplated herein. Such initial work shall include the preparation of architectural renderings, conceptual designs, architectural outlines of the project and initial planning, and once approved, shall proceed to actual preparation of plans and specifications, ordering of equipment (particularly long lead-time items as set forth in Section 7.2), and seeking and obtaining commitments from contractors. Capital further agrees that regardless of whether this Agreement has been formally approved by the NIGC or Capital or its principals have obtained background clearance from the NIGC, as soon as practical after National Environmental Policy Act processes have indicated that construction may commence and a FONSI has been obtained for the Project, Capital shall commence construction, including the expenditure of such funds as shall be required. Prior to, or as soon as practical thereafter, Capital shall prepare and submit to the JAC a construction schedule for

the construction and final equipping of the Facility (the "Construction Schedule").

6.6.2 Compliance with Plans and Specifications. All buildings and improvements will be constructed in accordance in all material respects with the Plans and Specifications submitted to and approved by the JAC.

6.7 Insurance. Tribe will obtain such insurance coverage, including coverage of public liability and property loss or damage, as is normal for the type of operation to the extent commercially available, and will maintain the same in force during the Term of this Agreement. [§531.1(b)(13)] All such insurance costs during construction shall be treated as part of the cost of construction and thereafter as an operating expense. The terms, conditions, and coverage limits of such insurance shall be subject to the Tribe's approval and subject to the standard set forth in this Section. The Tribe and Capital shall be named as insureds in all such insurance policies, including liability and property insurance policies as their interests may appear. All such policies shall be nonassessable and shall contain language to the effect that (i) any loss shall be payable notwithstanding any negligence of the Tribe, Capital, or any affiliate of Capital that might otherwise result in a forfeiture of the insurance, (ii) the insurer waives the right of subrogation against Capital, its affiliates and their agents and representatives, and (iii) the policies are primary and noncontributing with any insurance that may be carried by Tribe, Capital or its affiliates. Neither party shall voluntarily make material changes in such insurance policies without the prior written approval of the other party. Each party hereby waives subrogation against the other.

7.0 **Project Preparation.**

7.1 Capital Services. In addition to constructing the Facility, Capital shall be responsible for preparing the Facility to open by providing the Deliverables (as defined in Section 8.2) and related services as to enable the General Manager to engage in all necessary pre-opening activities, including, but not limited to, purchasing goods and supplies, hiring and training qualified personnel, establishing bank accounts, and installing internal controls.

7.2 Purchase and Storage of Long Lead-Time Items. Capital shall take reasonable steps, including obtaining all necessary funding, to order, in consultation with the General Manager and the approval of the JAC, FF&E that involves long lead times for delivery as soon as possible and upon availability of such funds from the Cash Collateral Account. Capital represents

that funds from the Cash Collateral Account shall be available for FF&E financing as a permitted Project Cost. Tribe and Capital will use their reasonable best efforts to satisfy those conditions to availability of funding under the Cash Collateral Account which conditions are attached as Exhibit A to the Letter Agreement, which Letter Agreement and all exhibits thereto are incorporated herein by reference. NIGC approval of this Agreement or of Capital suitability shall not be a condition of ordering such FF&E. Any FF&E received pursuant to this Section, including, but not limited to, gaming tables, chairs, and other equipment and furniture, shall be stored on the Reservation until used, which may be in connection with the Interim Facility under Section 23.0 below (even if Capital is not approved by the NIGC under this Agreement) pending opening of the Facility provided, however, that said items shall be removed from use in connection with such interim gaming at the discretion of the JAC in order to have them available in sufficient time to install and/or move them to the Facility prior to its opening; provided, however, said items may be removed at the sole discretion of Capital within thirty (30) days of the opening of the Facility upon at least ten (10) days written notice of Capital's intention to remove such FF&E from use in connection with the Interim Facility. The Tribe shall provide proof of insurance covering any such equipment used in connection with any Interim Facility.

7.3 Pre-Opening Budget. In addition to the foregoing, Capital shall, prior to any anticipated opening of the Facility and the Interim Facility, and with the consultation of the General Manager, prepare and submit to the Tribe the following:

7.3.1 A pre-opening budget, projecting estimated costs associated with the pre-opening, opening and start-up of the Facility;

7.3.2 A projected estimated first year operating budget; and

7.3.3 An estimate of initial working capital and initial gaming bankroll to be required through the end of the first month of operations following the Opening Date, and deposit into said bank accounts of such working capital and gaming bankroll.

7.4 Reviews and Revisions of Budgets. Upon submission of a budget, the Tribe shall review such budget and approve same or provide specific comments, if any, in writing to Capital within five (5) business days after receiving the proposed budget. From the date of receipt of the Tribe's comments, Capital shall have five (5) business days to revise the budget and resubmit the same to the Tribe, which shall have five (5) days to review and approve

the resubmission or to provide specific comments, if any, in writing to Capital. In the event the Tribe does not approve the resubmitted budget and the parties are otherwise unable to agree on the disputed item(s), then any such disputed item(s) shall be submitted to the JAC and, if the JAC cannot decide the issue, to arbitration as provided for herein. General Manager shall be included in all deliberations between the parties on the Budget but shall act as a representative of the Facility with an eye towards maximizing Net Gaming Revenues and Net Non-Gaming Revenues.

7.5 Contracts. Capital shall assist the Tribe in entering into such contracts and making such other plans and arrangements as will be necessary to commence operations of the Facility project. Capital shall abide by any procurement policies as herein stated and any policy which recognizes the Tribe's sovereign immunity from sales or use taxes whenever permitted by Law.

8.0 **Additional Capital Responsibilities.**

8.1 General Operational Responsibilities. The Tribe recognizes Capital's special expertise in operating gaming facilities and relies on that expertise to provide guidance to the Tribe, the General Manager and the Facility and/or Interim Facility, once the Interim Facility is open for business. As part of its responsibility under this Agreement, Capital agrees that during the Term, it will furnish to the Facility the Deliverables set forth below. In addition, Capital will take responsibility for ensuring that the Facility is operated by the General Manager in accordance with sound legal and profitable gaming industry practices, by monitoring and reporting to the Tribe on the implementation of such Deliverables, the Accounting Standards set forth below, and on Facility operations generally, and shall make timely recommendations to the JAC for improvements to be made as needed.

8.2 Deliverables. Capital will furnish to the Tribe, with a copy to the JAC and the General Manager, the following:

8.2.1 Personnel Policies. Suggested personnel policies regarding hiring, training, supervising, promoting and discharging of employees and implementation of Tribal and Indian preference programs; provided that the establishment and administration of such policies shall be the responsibility of the Tribe. Any dispute between Capital or Tribe and any customer of the Facility shall be resolved consistently with applicable procedures set forth in an applicable Tribal ordinance and the

Compact. [§531.1(k)(1)] Capital shall develop commercially reasonable personnel policies and procedures which, at a minimum, shall establish a grievance procedure to settle disputes between Capital and employees or Tribe and employees. The dispute resolution mechanism between Capital and employees is attached hereto as Exhibit E. The policies and procedures shall be subject to approval by the Tribe, such approval not to be unreasonably withheld; [§531.(k)(3)]

8.2.2 Operational Procedures. Written policies, procedures and rules relating to the daily operation of the Facility (including each department thereof) and related businesses, including, but not limited to, policies which reflect industry standards or better regarding operations and supervision of gambling games, food preparation and service, sales of goods to gaming customers, Facility maintenance, security and surveillance, and marketing and promotions;

8.2.3 Cash Management Systems. Written procedures for collecting, transferring, receipting, safeguarding and accounting for all monies, tokens, chips, playslips, chits, revenues and expenses, and all other internal controls typical for a casino of the size and scope of the facility; models and ongoing advice regarding maintenance of Facility books and records and reporting of all financial transactions in accordance with GAAP, including those matters more specifically set forth in Section 9.0 below;

8.2.4 Accounting and Financial Controls. Written policies in connection with compliance with any accounting or other financial control rules promulgated by the Commission and under applicable Law;

8.2.5 Maintenance of Professional Standards. Written policies regarding maintenance of professional standards of operation and the appearance thereof;

8.2.6 Business Plans and Budgets. Written business plans, marketing plans, advertising and promotional plans, and operating budgets as needed throughout the Terms, but no less than every twelve (12) months;

8.2.7 Engagement of Professionals. Recommendations regarding the engagement of professional personnel, including accountants, auditors and attorneys, related to the Facility;

8.2.8 Compliance with Law. Written materials regarding compliance with all applicable Laws, including but not limited to the correct and timely payment of all worker's compensation, FICA, disability and other benefits as may be required of a Tribal employer on an Indian reservation, including the payment of any withholding taxes and the filing of all reports and returns in connection therewith, with IGRA and all regulations thereunder, with Capital, and with all collective bargaining agreements, if any, which may be applicable to said Facility;

8.2.9 Training. Together with the General Manager, initial training for all positions and in implementing ongoing training capability for employees;

8.2.10 Job Descriptions. Detailed descriptions for each employment position, including management positions, to be occupied in connection with the Facility, the number of persons required to fulfill such positions, and the hours and days per week of employment; and

8.2.11 Salary/Wage Schedule. Detailed salary and wage schedules for each position, including the terms of and proposed fringe benefits such as vacations, bonuses, sick leave, and the like.

8.3 Confer with General Manager. Capital shall attempt to include the General Manager's written suggestions wherever it is practicable, timely and reasonable to do so.

8.4 Obligations and Authority to Implement Budget; Limitation on Contractual Obligations. The Tribe shall approve or disapprove the Annual Budget and other Deliverables within ten (10) days after receipt. If the Tribe disapproves any of such Deliverables or Annual Budget, the Tribe shall specify the reason for disapproval. Capital shall then resubmit such Deliverable and/or Annual Budget for Tribal approval. If no Annual Budget for the current year has been approved by the Tribe, General Manager shall abide by the most recent Annual Budget approved by the Tribe in accordance with the foregoing provisions (the "Approved Annual Budget"), and shall supervise Facility personnel in making the specified expenditures and incurring the specified obligations provided for in the Approved Annual Budget. To the extent that it is absolutely necessary, General Manager shall have the flexibility to deviate from any Approved Annual Budget up to 64 of any specific line item of such Approved Annual Budget.

8.5 Environmental Compliance. Capital agrees that it shall undertake the responsibility for ensuring that all construction and operation of the Facility is in compliance with any federal or state environmental laws imposed thereon, including but not limited to compliance with the National Environmental Policy Act ("NEPA") to the extent required by law. Such efforts will include, but not be limited to, engaging an environmental specialist to assist in the preparation and presentation to the NIGC and other agencies if necessary, of an Environmental Assessment and such other reports as may be required. Capital shall have the discretion of selecting such consultant, and the budget for all environmental work is hereby approved by the JAC to be up to which shall be included as a pre-opening expense. To the extent that the fees and expenses of the environmental consultant exceed the parties hereto agree and acknowledge that any such additional costs and expenses shall be approved by the JAC prior to their expenditure. Capital shall direct its efforts toward expediting the process to the extent possible under law, and shall use the Tribe's resources and previous environmental work on the site to the extent such use will assist in expediting the environmental clearances which are required. Tribe will cooperate with all information requests of the consultant and will release a true and complete copy of all its files on the work done on any Environmental Assessment on the site to Capital at or prior to the Closing. Tribe will also furnish all information required by the NIGC or other relevant agencies in regard to such environmental process. Except for Capital or Capital's designated consultant, Capital agrees not to permit any other party to file the Environmental Assessment or any other study (whether in draft form or otherwise) with the NIGC, any governmental agency, or anyone else not retained by Capital or Tribe in connection therewith, without Tribe's written approval. Tribe shall have three (3) business days from submission of the Environmental Assessment or any other report submitted to it (whether in draft form or otherwise) to approve the document, which approval shall not be unreasonably withheld. Failure to act within three (3) business days shall be deemed an approval. The Tribe and Capital specifically agree that the scope of the Environmental Assessment shall be limited to the Facility. Notwithstanding the foregoing, and in recognition of the government to government relationship between the Tribe and local governments, any contacts with the City of Auburn or King County regarding such environmental work (other than routine contacts necessary in order to perform the work to finalize the Environmental Assessment) shall be with the prior consent, and if it so chooses, the participation of, the Tribe through its designated representatives in this regard. Under no circumstances shall Capital make any agreements with or concessions to any governmental agency on behalf of Tribe.

8.6 Capital's Costs. All costs incurred by way of Capital's own employee salaries, benefits and travel expenses, and overhead, (but not consultants for the benefit of the Project) in carrying out its responsibilities in ensuring that the Facility is operated properly and in providing said Deliverables shall be borne solely by Capital and compensated, if at all, as part of Capital's Fee. Direct and out of pocket expenses incurred by Capital to third parties shall be reimbursed only if approved in writing in advance by the Tribe. It is anticipated that fees and expenses of professionals, such as architects, engineers, accountants and others shall be contracted directly with Tribe.

9.0 **Accounting Standards**

9.1 Accounting and Internal Controls. In order to ensure that the Facility is maximizing its revenue and has the ability to accurately analyze and account for its performance, the following minimum accounting and internal control standards shall be adopted.

9.2 Internal Control; Monitoring of Gross Receipts and Game Materials. Subject to the approval of the Tribe, Capital shall adopt in writing a system of internal controls for the safekeeping and monitoring of all monies, chips, markers, inventory and other items of value in connection with the gaming operations, food services, sales, receipts, prizes, gaming and other activities related to the Facility, and to prevent skimming of Gross Receipts or other disappearances of such proceeds ("Operating Procedures"), which Operating Procedures shall be employed by Facility personnel. At a minimum, the Operating Procedures shall provide that all receipts shall be counted and receipted regularly but no less than once per day, under oath by duly authorized and bonded representatives of Tribe and Capital. At least two (2) employees shall be present during any such count and shall both certify such count as provided for herein. The General Manager should adhere to all internal controls as a material condition of employment.

9.3 Books and Records. The Tribe shall maintain full and accurate original books and records, files, receipts, supporting documentation for all expenses and disbursements, and all other business books, books of account or records normally maintained by a prudent businessman engaged in a similar business as a trustee for another's interest, and in accordance with GAAP. Such books and records shall be maintained at the Facility. Tribal officials and representatives and Capital officials and representatives shall have immediate access to the gaming operations of the Facility at all times, including the books and records, and to any other gaming related information. **[§531.1(e)]** Capital and Tribe shall have the right to verify daily gross

revenues and income from the Facility, as well as the right to independently audit, inspect and examine such records through an agent, employee, attorney or accountant. The bookkeeping and accounting system used shall be in accordance with the method recommended by the certified public accounting firm engaged to do the Facility audits and after consultation with the General Manager and adoption by Capital, subject to approval of the Tribe. The accounting system shall, at a minimum, include an adequate system of internal accounting controls, permit the preparation of financial statements in accordance with GAAP, be susceptible to audit, allows any Class II gaming operations, the Tribe, and the NIGC to calculate the annual fee under 25 CFR §514.1, permit the calculation and payment of Capital's fee, and provide for the allocation of operating expenses on overhead expenses among Capital, the Tribe, the Facility and any other user of shared facilities and services. **[§531.1(c)(1)-(6)]**

9.4 Accounting and Audits. The Tribe shall prepare monthly statements of all receipts, expenses, and other amounts collected and received and all deductions and disbursements made therefrom, and all assets and liabilities of the Facility. All monthly statements shall be signed by both the CFO and the Controller. The monthly statements shall be issued to the parties on or before the twenty-fifth day of the month following the month of reporting. Tribe shall select a certified public accounting firm of regional stature and reputation with experience in Class III gaming to perform an annual audit of the books, records, and internal controls of the Facility, and to annually certify the accuracy of the annual financial statements issued hereunder and render its opinion thereof to Capital and Tribe, all in accordance with GAAP. Such certified public accounting firm shall not be the firm utilized to prepare the regular monthly statement of the Facility. The expense for the audit shall be an operating expense.

9.5 Gaming Material and Receipts. All gaming materials and receipts shall be secured at all times, including the placement of such chips and funds in the safe or vault provided in the plans and specifications and otherwise complying with any requirements imposed or recommended by any company furnishing insurance, security, auditing or bonding. Any room in which a safe or vault is maintained shall be equipped with coded access alarms, television monitors, motion detectors, and such other security system as shall be determined in accordance with this Agreement. The Tribe shall maintain adequate twenty-four (24) hour security guard protection.

9.6 Bank Deposits. Receipts shall be transported to the bank for deposit into the Operating Account at least once each day by an approved armored transport carrier. Adequate security shall be provided in transporting funds to the armored carrier, except that after duly being counted and receipted as set forth above, such funds reasonably necessary to make change and continue Facility operations may remain on the premises. All protection and transportation of funds shall be through the use of bonded and professional trained personnel. Capital shall receipt copies of all deposit slips, bank statements, receipt summaries, and all other Facility summaries as and when prepared by Facility management. Capital and Tribe shall have the irrevocable right to designate three (3) specific individuals who shall be entitled to inspect the bank records and statements at the bank at any time permitted by the bank.

10.0 **Taxes.**

Tribe agrees that during the Term no tribal license, tax or other charge ("Tribal Tax") may be imposed upon Capital, the Facility, any sales to or receipts from patrons thereof, or any property (real or personal, tangible or intangible) used in association with the conduct of the Facility. As used herein, the term "Tribal Tax" shall not mean reasonable fees or charges imposed on Capital (or its principals or others affiliated with Capital) in connection with any background investigation, license application or suitability determination by Tribe's Gaming Commission. It shall be the responsibility of Capital to see that the Facility is advised on an ongoing basis and so as to avoid penalties or interest in complying with the provisions of the Internal Revenue Code of 1986, as amended, of any other federal or state tax law which applies concerning the reporting, payment and withholding of taxes with respect to winnings from gaming or wagering enterprises, employment of personnel, or excise or similar taxes lawfully imposed on Facility sales, revenues or profits. Capital shall consult with and assist General Manager to ensure, and it shall be Capital's responsibility that, such payments and reports, with respect to the Facility are correctly and finally made. **[531.1(b)(14)]**

11.0 **Exclusivity.**

Tribe agrees that, beginning with the date of the Agreement and during the Term, it will not engage any party other than Capital to perform the services to be provided by Capital hereunder as either an operator or a manager. Nothing herein shall be deemed to restrict Tribe from operating off-track betting or horse racing in another facility on the Reservation, or from engaging consultants with respect to specific needs, such as but

not limited to computer systems, surveillance, operation of games, marketing and public relations, and the like. It is the express understanding of the parties hereto that if Class II (other than pursuant to the existing Bingo Agreement) or Class III gaming activities (other than OTB or horse racing activities at another facility on the Reservation) are conducted by the Tribe in another facility utilized for operating off-track betting or horse racing on the Reservation, the Tribe specifically agrees and acknowledges that Capital shall be the exclusive operator of such Class II (other than pursuant to the existing Bingo Agreement) or Class III (other than OTB or horse racing activities at another facility on the Reservation) games to the extent they are allowed by IGRA, as amended, the Compact, as amended or any judicial determinations or any new Compact.

11.1 Special Terms with respect to In-Facility Off-Track Betting. Tribe agrees to provide up to for construction of up to 15,000 square feet in the Facility in addition to the square footage set forth in Recital F, which additional space shall be used for OTB. Said contribution shall be deposited in such account or accounts and pursuant to such release instructions as the Joint Advisory Committee shall determine. With respect to any such OTB in the Facility, and in consideration for Tribe's contribution to such construction, only the of Gross Gaming Revenues actually retained by the Facility each year during the Term from OTB wagers at the Facility, and no others regardless of where such wagers are made, shall be included in the Gross Gaming Revenues upon which Capital's fee shall be based under Section 15.1 below. Said OTB Gross Gaming Revenues includible for the purposes of determining Capital's fee shall not include any revenues collected or retained by Tribe from OTB wagers which would have been retained as assessments, fees or taxes by the State in which the race takes place (or any agency affiliated therewith) but for the fact that Tribe is a federally recognized Indian tribe or that such retentions or collections are kept by the Tribe as a consequence of the Indian Gaming Regulatory Act.

12.0 **Limitations On Capital's Rights And Interest In Facility; Tribe's Ultimate Control.**

Capital acknowledges and agrees that the Tribe has the sole proprietary interest in the Facility and that other than any security interest which might be created in favor of Capital as "Lender" under the Security Agreement, nothing express or implied by this Agreement or Funding Agreement, or the relationship of the parties, is intended to or shall be deemed to grant to Capital an ownership, proprietary, partnership, joint venture, or possessory interest in the Facility, the Facility, or the Reservation.

13.0 **Capital To Be Independent Contractor.**

The parties agree that Capital will act as an independent contractor in the performance of its duties under this Agreement and shall not be deemed an employee of Tribe. Accordingly, Capital shall be responsible for payment of all taxes, including federal, state and local taxes arising out of Capital's own activities in accordance with this contract, including, by way of illustration, but no limitation, federal and state income tax, social security tax, unemployment insurance taxes, and any other taxes or business license fees as may be imposed on Capital, but Capital shall have no responsibility with respect to the reporting or payment of taxes, collection and payment of withholding, or the like by Tribe in connection with the Facility.

14.0 **Confidential Information.**

Except as required by any regulatory agency having jurisdiction over the Project or this Agreement or the rules and regulations of the U.S. Securities and Exchange Commission, and any disclosure required to the Trustee for Capital's bondholders, Capital agrees that any information received by it or any officer, director, shareholder, employee, representative, agent or consultant retained by Capital during the Term which concerns the personal, financial or other affairs of the Tribe, its officers, committee or Council members, or other Tribal members, or regarding marketing, promotions, customer lists, or operations (including internal controls, personnel policies, operating procedures, financial or statistical data) of the Facility will be treated as Tribe's trade secrets by Capital in full confidence and will not be revealed to any other persons, firms or organizations without Tribe's written consent.

15.0 **Capital's Fee; Tribe's Guaranteed Draw.**

15.1 Computation of Capital's Fee. Tribe agrees to pay Capital a fee

64

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Capital's Fee shall also be reduced by the salary, benefits, travel and other costs paid to the CFO pursuant to Section 5.7. Notwithstanding anything in this Agreement to the contrary, Capital's Fee shall be limited to of Net Gaming Revenues as defined in Section 3.23. [§531.1(i)]

15.2 Capital's Fee for Gross Non-Gaming Revenues. Tribe agrees to pay Capital a fee for all Gross Non-Gaming Revenues, said fee to be equal to the percentage paid by the Tribe for the Gross Gaming Revenues as provided in Section 15.1 above and subject to all of the other terms and conditions applicable thereto.

15.3 Guaranteed Draw. Each month, the Tribe shall be entitled to a minimum payment of , which shall be payable out of revenues before the retirement of development and construction costs. (The "Guaranteed Draw"). [§531.1(f)] If the Guaranteed Draw cannot be paid out of cash flow each month, then Capital agrees to make up any short-fall (the "Short-fall Payments") so that the entire amount of the Guaranteed Draw is paid each month. Notwithstanding anything to the contrary herein, the Guaranteed Draw payable to the Tribe during the period for which an Interim Facility is in operation shall be per month which shall be payable for each month beginning with the first full calendar month of operations regardless of whether this Agreement has been approved by the NIGC by such date. Any Short-fall Payment shall be repaid to Capital only from the Tribe's share of future Net Gaming Revenues, without interest, pursuant to the priorities set forth in Section 15.5 (except with respect to Short-fall Payments made during any period of gaming in the Interim Facility, which shall be nonrepayable, non-cumulative, and non-recoupable).

15.4 Timing of Payments to Tribe and Capital. Capital's Fee and Tribe's Guaranteed Draw as well as any other cash distributed to Tribe shall occur on the 25th day of the month following the month for which such fees are computed.

15.5 Distribution of Gross Gaming and Non-Gaming Revenues. Following the monthly determination of operating results, the following payments in order of priority shall be made on the basis of sound cash management practices, as determined by the JAC, which is fair to Capital and Tribe. In the event the JAC determines that some or all of these payments cannot be made, they will be accrued as payables and disbursed according to the JAC's cash management policy.

Priority of Payments:

a. Current operating expenses and interest payments on loans herein and under the Funding Agreement.

b. Guaranteed Draw payment to Tribe.

c. Principal payments on loans herein and under the Funding Agreement (which shall not be deemed operating expenses).

d. Amount of any accrued and unreimbursed Short-fall payments made by Capital.

e. Short-fall catch-up on any accrued amounts of Capital's Fee.

f. Capital's Fee.

g. Any remaining proceeds to Tribe.

16.0 **Conditions to Enforceability of This Agreement.**

This Agreement shall not be enforceable unless and until the parties have signed and exchanged this Agreement; the Agreement has been approved by the Chairman of the NIGC **[§531.1(n)]**; all sums to be paid at the Closing pursuant to this Agreement have been delivered to Tribe; Capital has delivered into escrow as provided for in Section 17.4.2 a fully authorized and executed termination and release letter in the form attached hereto as Exhibit B; and Tribe has delivered to Capital an executed Consent to Pledge and Assignment to Trustee in the form attached hereto as Exhibit C.

17.0 **Termination and Remedies.**

17.1 Involuntary Termination Due To Changes in Applicable Law. It is the understanding of the parties that the establishment and the operation of the Facility complies with all applicable laws. In the event that this Agreement is determined by a court of competent jurisdiction no longer to be lawful, the obligations of the parties shall cease, and this Agreement shall be terminated.

17.2 Events of Default. Any one or more of the following shall constitute an event of default as that term is used herein:

17.2.1 Default in the payment of any payment (including any Late Payments or interest) when due if such default continues for more than ten (10) days after the due date thereof;

17.2.2 Default in the observance or performance of any covenant, condition, agreement; warranty or provision hereof and such default has continued for more than thirty (30) days after notice to cure thereof, unless such default cannot be cured in such time, in which case after a failure to cure said default after exercising due diligence to do so after such default has become capable of being cured;

17.2.3 Any false representation or warranty herein or in connection herewith in any material respect which is not made good within fifteen (15) days after notice to do so;

17.2.4 Any final decree or judgment of insolvency or bankruptcy by Capital; or

17.2.5 In the event Capital should fail to qualify under the Compact, Ordinance or by law for a license, certificate, or other requirement to do business with Tribe or on Tribe's Reservation as contemplated herein.

17.3 Remedies. When any event of default has occurred and is continuing, the parties, at their option, may:

17.3.1 Proceed by appropriate Dispute Resolution as provided hereinbelow;

17.3.2 Terminate this Agreement on notice to defaulting party; or

17.3.3 Recover any damages occasioned by such default. All damages hereunder shall bear interest from the date due at the rate of

64

after Tribe receives its Guaranteed Draw in any month in which failure to pay such proceeds are the source of such damages, and no other remedy, legal or equitable, shall be available against the Tribe. Without limiting the foregoing, Capital shall have no right to claim or seek possession or occupancy of the Facility or any other

property of Tribe or to prevent Tribe from engaging in gaming or any other activity within or without the Facility without the Tribe's consent.

17.3.4 Capital shall have the right to withhold (i) any of the payments set forth in Section 2.2 or 2.3, (ii) the loans pursuant to the Funding Agreement and (iii) the loans referenced in paragraph 12 of the July 29, 1994 Letter Agreement.

Except for the limitations set forth in subsection 17.3 above, which shall prevail as to Tribe, the remedies hereinabove shall be cumulative and in addition to any other remedy available by Law. Any termination provided for in this Agreement shall not require approval of the Chairman of the NIGC. **[§531.1(j)]**

17.4 Termination Due to Failure to Establish Facility. Subject to Section 32 hereof, if Capital does not complete construction of the Facility so that it may be opened to the public by September 30, 1995, this Agreement shall, at the option of the Tribe, be terminable upon delivery of written notice to Capital.

17.4.1 Option to Extend Termination Date. Capital may at its option extend such termination date by paying,

64

All options fees shall be non-refundable and non-recoupable and deemed consideration for the options only and not as penalties or forfeitures.

17.4.2 Further Conditions to Exercise of Extension Option. As a condition to the validity of this Agreement and any obligation of Tribe to submit it to the NIGC for approval or perform any other obligation hereunder, Capital shall provide a termination and release letter duly executed and authorized by Capital and addressed to Tribe in the form attached hereto as Exhibit B, upon execution of this Agreement, by which letter Capital intends to fully release Tribe from any and all obligations under this or any other agreement (except for the Bingo Management Agreement and Tribe's obligations under the Funding Agreement, Security Agreement and Promissory Note) which may exist between either of them and Tribe if the Agreement terminates on or after

September 30, 1995. The original of such letter shall be held in escrow by an escrow agent acceptable to Tribe and Capital and pursuant to an escrow agreement to be executed concurrently with the execution of this Agreement. If Capital desires to exercise the option to extend the termination to October 31 or any other date provided above, and as a material condition to the effective exercise of said option, Capital and Tribe shall each execute a new letter in exactly the same form as Exhibit B (except for the insertion of the new termination date) and deliver it to said escrow along with the payment which is due for such extension.

18.0 **Interference with Tribal Government.**

18.1 Capital shall not unduly, either directly or indirectly, interfere with, become involved in, or attempt to influence the internal affairs of Tribe, its members or its Tribal government. Any attempt by Capital or its officers, agents, or employees to influence any Tribal employee or member of the Tribal Council to circulate or vote on any initiative or recall petition or any other matter, or the paying of any monies thereto without full disclosure to and approval by the Tribe, shall constitute an interference with Tribal affairs and shall be grounds for termination of this Agreement.

18.2 As a material condition of this Agreement, Capital warrants and represents that no payment or thing of value has been made or provided to by it or any of its agents, employees or representatives, or will be made or provided to in the future by it or its agents, employees or representative, to any member of the Tribal government or to any relative of any Tribal official, or to any Tribal employee, including General Manager, without the knowledge and written consent of the Tribe.

18.3 No member of the Tribal government, or relative in the immediate household of a member of the Tribal government, may be an employee of Capital.

18.4 No elected member of the Tribal government or relative of an elected member of the Tribal government shall have any direct or indirect financial interest in the Facility, other than as a Tribal member. No such person shall be an investor in, or shareholder, director, officer or employee of Capital without the Tribal Council's express written consent.

18.5 For the purpose of this paragraph, "relative" means an individual who is related as a father, mother, son or daughter. "Member of the Tribal government" means the Tribal Council or

governing body, including any independent board or body created to oversee any aspect of gaming or any Tribal court officials.

19.0 **Limited Waiver of Sovereign Immunity; Arbitration.**

19.1 In the event of a dispute with regard to the interpretation of, or enforcement of rights or duties under this Agreement, the Funding Agreement, and the Pledge and Assignment Agreement, Tribe expressly waives, in a limited manner, its sovereign immunity from suit on such issues and such issues only, and consents to be sued in any Tribal court, and in the United States District Court for the Western District of Washington, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court. Remedies against the Tribe in such actions shall be limited, provisionally and permanently, to those set forth in paragraph 17 of this Agreement. Notwithstanding the foregoing, disputes with respect to any consent or approval required to be made by either party wherein it is stated that such approval shall not be unreasonably withheld, and provided neither party is claiming a breach or cause for damages or termination of the contract, shall be referred to Arbitration in accordance with the Rules of the American Arbitration Association, to the extent not inconsistent with this Agreement. The rules for such Arbitration are as follows:

19.1.1 The arbitration shall take place on the Reservation, or if that is not possible under said rules, as close thereto as practicable;

19.1.2 The decision of the Arbitrator shall be enforced with the same force as a decree of a court having competent jurisdiction;

19.1.3 Both parties agree to submit to the jurisdiction of such arbitration and to any court described above for resolution of such disputes and enforcement of any and all orders arising in connection therewith, and expressly waive any immunity they may claim in connection therewith; and

19.1.4 Arbitration costs arising out of this procedure shall be borne equally by the parties; provided, however, the Arbitrator shall have the authority to assess such costs disproportionately or to assess all of the costs to one party if arbitration is required because of unreasonableness or bad faith on the part of such party. **[§531.1(k)(2)]**

19.2 This Agreement does not constitute, nor should it be construed as, a waiver of sovereign immunity of the Tribe, except as set forth herein.

20.0 **Notices.** Any notice required to be given hereunder shall be delivered personally, shall be sent by first-class mail, postage prepaid, return receipt requested, or shall be given by facsimile, to the respective parties at the addresses set forth hereinbelow, which addresses may be changed by the parties by notice conforming to the requirements of this paragraph. Any such notice deposited in the mail shall be conclusively deemed delivered to and received by the addressee five (5) days after deposit in the mail, if all of the foregoing conditions of notice shall have been satisfied. Any facsimile communication shall be deemed delivered and received on the date of the facsimile, if (a) the transmittal form is retained by the sender, and (b) the facsimile communication is followed by mailing a copy thereof to the addressee of the facsimile in accordance with this paragraph.

Addressed to Tribe:

Tribal Chair
Muckleshoot Tribe
39015 172nd Avenue Southeast
Auburn, Washington 98092

With copies to:

Robert L. Otsea, Jr., Esquire
Office of Tribal Attorney
Muckleshoot Tribe
39015 172nd Avenue Southeast
Auburn, Washington 98092

Jerome L. Levine, Esquire
Levine & Associates
2049 Century Park East - Suite 710
Los Angeles, California 90067

Addressed to Capital:

Edward M. Tracy, President and
Operating Officer
British American Bingo, Inc.
2701 East Camelback Road - Suite 484
Phoenix, Arizona 85016

With copies to:

William Papazian, Esquire
Vice President and General Counsel
Capital Gaming International, Inc.
Bayport One, Suite 250
8025 Black Horse Pike
West Atlantic City, New Jersey 08232

Thomas P. Gallagher, Esquire
Mason, Briody, Gallagher & Taylor
104 Carnegie Center, Suite 201
Princeton, New Jersey 08540

21.0 **Additional Covenants of Capital.**

21.1 Capital has heretofore supplied the NIGC and the Washington State Gambling Commission with the information required under 25 CFR, Section 537.1(b)(1) and 537.1(b)(1)(i) for those persons and entities identified in 25 CFR, Sections 537.1(a) and 537.1(c)(1), and such information is incorporated by reference in the filing of this Agreement with the NIGC.

21.2 The list above will be updated by Capital on a monthly basis if there are any changes to this list.

21.3 Capital warrants that every person whose name appears or shall in the future appear on the list are of good moral character and have never been convicted of any felony or of any misdemeanor involving moral turpitude, and that such persons are suitable for a gaming license under Law.

21.4 Capital and its employees shall, at all times, abide by all ordinances, rules and regulations of the Tribe not inconsistent with the terms hereof.

21.5 Capital shall take all reasonable measures to provide gaming services as provided herein in a professional, orderly and attractive manner.

22.0 **Obligations of Tribe; Licensing; Interim License.**

Tribe shall provide all business permits or licenses as required by Tribal laws or ordinances, subject to any approvals which must be obtained thereunder, and further subject to such investigative and application fees and charges as may be required. Tribe hereby represents that it has issued an interim license to Capital, as follows: Capital has represented to Tribe that it has

qualified with the Washington State Gambling Commission ("WSGC") to provide gaming services and finances to the Tribe under Tribe's Compact. On the basis of such representation, and assuming there is no change in that status, the Tribal Gaming Commission has issued an interim license to Capital subject to completion of the Tribal Gaming Commission's own investigation. The Tribe and Tribal Gaming Commission also agree that, in light of the findings by the WSGC, a license to do business on the Reservation will not be refused or revoked without reasonable cause, and that fair consideration shall be given at all times to any then current findings as to Capital's suitability by the WSGC. Capital shall provide such information and pay such fees and costs as the Tribal Gaming Commission shall reasonably require, subject to the prior approval of Capital, in order to complete background investigations in connection with the license. The refusal to pay reasonable fees and costs when requested may be grounds for denying a license.

23.0 **Interim Facility.**

23.1 The Tribe and Capital agree to commence the operation of an Interim Facility for the purposes of conducting Class III gamings on or before April 30, 1995. Capital and Tribe agree to use their best efforts to have the Interim Facility ready for opening to the public, with all regulatory approvals in place, on or before April 30, 1995. The opening of the Interim Facility shall constitute the opening of the Facility for the purposes of this Agreement. If the Facility (whether permanent or an Interim Facility) is ready to open but this Agreement has not yet been approved by the NIGC, then the Tribe may open the Facility (or Interim Facility) to the public for business, which facility shall be operated pursuant to the terms and conditions of this Agreement to the extent permitted by Federal or State law including, without limitation, the rights and obligations of the Tribe and Capital to serve on the JAC (subject to applicable Federal or State law) provided, however, that (i) Capital shall receive no fees pursuant to this Agreement until it receives NIGC approval, (ii) the Tribe will commence monthly payments pursuant to the Funding Agreement, and (iii) the Term of this Agreement shall commence upon the earlier of (x) the date this Agreement receives NIGC approval or (y) 180 days following written confirmation by the NIGC that the filing package for NIGC approval is complete and this Agreement is deemed approved as a matter of law.

64 23.2 The Tribe shall contribute to the construction of the Interim Facility and Capital shall pay the total cost of establishing the Interim Facility pursuant to a mutually agreed upon budget. Funds which are used for furniture, equipment or other property which are subsequently utilized in the permanent Facility will be considered a loan to the Tribe pursuant

to Section 2.4.4. After the termination of the use of the Interim Facility, Capital shall be entitled to retain all furniture, equipment and other property whatsoever (other than fixtures) utilized in connection with the Interim Facility which is not funded pursuant to Section 2.4.4 hereunder, i.e. which is not actually used in the Facility.

24.0 **Assignments.**

This Agreement is personal to Capital and shall not be subject to assignment or subcontracting by Capital without the express written approval of the Tribe, and any attempt to do so shall terminate this Agreement. **[§531.1(1)]** Capital represents and warrants that it and each of them are corporations in good standing within the State of New Jersey, and will maintain such standing throughout the Term. Any change in the ownership of 5% or more of Capital's issued and outstanding stock or, if a subsidiary corporation, of Capital's parent or any other corporation exercising control, shall constitute an assignment for these purposes. **[§531.1(m)]**.

25.0 **Consent and Approvals.**

Unless otherwise expressly provided, at all places in this Agreement where approval of a party is required, such consent shall not be unreasonably withheld.

26.0 **Applicable Law.**

This Agreement shall be construed in accordance with applicable federal law and the laws of the State of Washington to the extent State law applies.

27.0 **Guarantee of Capital Gaming International, Inc.**

Capital Gaming hereby guarantees the timely performance of the duties and obligations, each and all, of Capital Management under this Agreement, including any amendment thereto. If Capital ceases being the sole owner of Capital Management, Inc., Capital Gaming may request that additional owners assume part or all of such guarantee, but such substitution shall not be effective unless and until Tribe has approved the substitution in writing. Tribe's approval shall not be unreasonably withheld.

28.0 **Entire Agreement.**

The Tribe and Capital represent to one another and to the Chairman of the NIGC as required by 25 CFR Part 533.3, that this Agreement contains the entire agreement of the parties on the

subject matters contained herein, and neither party is relying on any statements, representations or promises made by another (whether or not a party hereto) which are not contained in this document. This document shall be deemed drafted by both parties and shall not be construed against any party by virtue of such draftsmanship. THE PARTIES HERETO EXPRESSLY AGREE AND ACKNOWLEDGE AND REPRESENT TO ONE ANOTHER AND TO THE CHAIRMAN OF THE NIGC AS REQUIRED BY 25 CFR PART 533.3, THAT UPON THE EXECUTION, DELIVERY AND FILING WITH THE NIGC OF THIS OPERATING AGREEMENT, THE LETTER AGREEMENT, THE FUNDING AGREEMENT AND THE CONSENT TO PLEDGE AND ASSIGNMENT AGREEMENT (COLLECTIVELY, "AGREEMENTS"), SUCH AGREEMENTS SHALL SUPERSEDE, IN THEIR ENTIRETY, ALL PREVIOUS LETTERS OF INTENT, MANAGEMENT AGREEMENTS, TERM SHEETS, PROPOSAL LETTERS, LETTER AGREEMENTS, ORAL AGREEMENTS AND OTHER AGREEMENTS OF ANY KIND OR NATURE WHATSOEVER, INCLUDING COURSES OF DEALINGS OR PERFORMANCE WHICH PRIOR AGREEMENTS, COURSES OF DEALINGS OR PERFORMANCE SHALL BE DEEMED NULL AND VOID AND OF NO FURTHER FORCE OR EFFECT WHATSOEVER EXCEPT FOR THE CLASS II MANAGEMENT AGREEMENT FOR THE MANAGEMENT OF THE MUCKLESHOOT INDIAN BINGO FACILITY AND THE LETTER OF EXTENSION WITH RESPECT TO SUCH CLASS II AGREEMENT, UPON WHICH THIS AGREEMENT SHALL HAVE NO EFFECT. **[§533.3(a)(2)]**

29.0 **Modification and Amendment.**

This Agreement may be modified or amended at any time and from time to time, but any such modification or amendment must be in writing and signed by each of the parties hereto and will be filed with the NIGC as a modification to a management contract pursuant to IGRA.

30.0 **Amendments to Agreement.**

The Tribe and Capital agree that they will execute any amendments to this Agreement, Funding Agreement or Consent to Pledge and Assignment required by Tribal Law, the NIGC and any state regulatory agency having jurisdiction over the Project. In the event that any amendment to this Agreement or Funding Agreement is required by the NIGC or any other federal or state regulatory body or Tribal Law and such amendment would have a material adverse financial impact on either of the parties hereto, then in such event, the parties agree to amend either of such agreements such that the parties will be re-positioned so that they maintain the same economic interest in the Project that they enjoyed prior to any such amendments being requested. If the parties cannot agree on the nature of the changes needed to reform the agreement(s), then they shall mutually select an independent auditing firm whose decision upon both shall be binding. The parties agree that such amendments will be executed within fifteen (15) business days of

receipt of any oral or written comments from these agencies or directive by the independent auditor.

31.0 **Tribal Preference.**

Capital and the General Manager shall give preference in hiring and promoting to qualified applicants in the following order of priority: (i) Tribal members, (ii) enrolled members of other federally recognized Indian Tribes and (iii) all other persons.

32.0 **Force Majeure**

Capital shall not be liable for failure to perform any of its obligations under this Agreement when such failure is caused by the occurrence of any contingency beyond its reasonable control, including, but not limited to, fire, (other than fire caused by an employee of such party), flood, strikes or other industrial disturbances, failure of supply of other raw materials, accident, war, riot, insurrection, acts of God, failure or delay in transportation, or unavailability of materials, or any occurrence or circumstance not caused by Capital leading to an extension of the Contract Time pursuant to the General Contractor's Agreement between the Tribe and Frontier Construction Company. If any such contingency occurs, the parties shall use their best efforts to perform their respective obligations to the extent possible during the pendency of such event; and the time for performing any obligation hereunder shall be extended by the period of such delay.

33.0 **Post-Closing Covenants.**

The Tribe expressly agrees that it shall deliver to counsel to Capital by 5:00 p.m. East Coast Time on August 2, 1994, a supplemental unanimous resolution or resolutions of the Muckleshoot Indian Tribal Council that specifically ratifies the negotiation, execution and delivery of this Agreement, the Funding Agreement, the Letter Agreement dated as of July 29, 1994 and the Consent to Pledge and Assignment. Such Tribal Resolutions shall be in form and substance satisfactory to Capital, and their counsel Mason, Briody, Gallagher & Taylor.

The Tribe expressly agrees that it shall deliver to counsel to Capital within five (5) calendar days of the Closing, the Interim License.

34.0 **Binding Effect; Third Party Beneficiaries.**

Once effective this Agreement shall be binding on, and enure to the benefit of, the parties and their permitted successors

and assigns and no third party is intended to or shall have any rights hereunder.

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

Capital: Capital Gaming Management, Inc.

By:_____
Edward M. Tracy,
President and Director

Capital: Capital Gaming International, Inc.,
a New Jersey corporation

By:_____
Edward M. Tracy,
President, C.O.O. and Director

Tribe: Muckleshoot Indian Tribe
A Federally Recognized Indian Tribe

By: Virginia Cross
Virginia Cross, Chairperson

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Approved: Harold A. Monteau 7-28-95
Harold A. Monteau, Chairman
National Indian Gaming Commission

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