SECOND AMENDED AND RESTATED MANAGEMENT DEVELOPMENT AGREEMENT

THIS SECOND AMENDED AND RESTATED MANAGEMENT DEVELOPMENT AGREEMENT ("Agreement"), made this 23rd day of November, 1994, by and between Tonto Apache Indian Tribe, (hereinafter referred to as "Tribe"), a Federally recognized Indian Tribe, and British American Bingo, Inc. (now called "Capital Gaming Management, Inc."), a business corporation incorporated under the laws of the State of New Jersey (hereinafter referred to as "Manager"), for the purpose of establishing and operating a tribal gaming enterprise.

RECITALS:

WHEREAS, the Tribe is a Federally recognized Indian tribe possessing sovereign power over the Tonto Apache Indian Reservation (hereinafter referred to as the "Reservation") located in the State of Arizona; and

WHEREAS, the Tribe seeks to provide employment, and improve the social, economic, education, and health needs of its members; and

WHEREAS, the Tribe has determined that the operation of a tribal gaming enterprise and other gaming activity under the Indian Gaming Regulatory Act, P.L. 100-497 (October 12, 1988), 25 U.S.C. §2701 et seq. ("IGRA"), will assist the Tribe in meeting its above objectives; and

WHEREAS, the Tribe does not at present possess sufficient technical and financial expertise to manage a tribal gaming enterprise and is desirous of employing a firm with management and business expertise to manage its tribal gaming enterprise; and

WHEREAS, Manager has the requisite expertise, and is capable of providing assistance in obtaining financing on behalf of the Tribe to improve, develop, manage, operate and maintain the tribal gaming enterprise; and

WHEREAS, on June 29, 1993, the Tribe and the Manager entered into a Management Development Agreement for the management of the gaming facility; and

WHEREAS, on May 16, 1994, the Tribe and Manager entered into an Amended and Restated Management Development Agreement to comply with the comments of the National Indian Gaming Commission to the June 29, 1993 Management Development Agreement; and

WHEREAS, this Agreement amends and restates the May 16, 1994 Amended and Restated Management Development Agreement to comply with the further comments of the National Indian Gaming Commission to the Management Development Agreement; and

WHEREAS, the National Indian Gaming Commission issued a Finding of No Significant Impact ("FONSI") in October 25, 1994 with respect to the permanent gaming facility proposed for construction; and

WHEREAS, Manager is a wholly-owned subsidiary of Capital Gaming International, Inc., a publicly-held corporation ("Capital Gaming");

NOW, THEREFORE, in consideration of mutual promises and covenants contained herein, the parties agree as follows:

I. PURPOSE

The purpose of this Agreement is to provide for the development, construction, operation and management of a tribal gaming enterprise on the Reservation at a permanent facility in accordance with the terms and conditions of this Agreement (hereinafter referred to as the "Enterprise").

II. TERM OF AGREEMENT

A. Term

Unless extended as provided herein, this Agreement shall be effective on the date of approval by the Chairman of the National Indian Gaming Commission and the management term of this Agreement shall extend beginning on the date of official opening of the Enterprise. At the sole option of the Tribe, this Agreement may

from the original expiration of the term of this Agreement upon the occurrence of the following pre-conditions:

1) The National Indian Gaming Commission, following application by Tribe and Manager, consent to such extension;

2) Manager consents to such extension; and

3) Except as set forth in Article III, Section B, all terms and conditions of the Agreement shall remain in full force and effect during the term of such extension. The Tribe shall serve written notice on Manager of its election to extend the terms of this Agreement ("Option Notice") no earlier than

from the expiration of the term of this Agreement. Manager shall have

from receipt of such Option Notice to consent to such extension.

III. ENGAGEMENT OF MANAGER

The Tribe hereby exclusively retains and engages Manager to improve, develop, manage, operate and maintain the Tribe's Class II and III gaming Enterprise, as Class II and Class III gaming are defined and authorized under the Indian Gaming Regulatory Act (25 U.S.C. §2701 et seq.) and in accordance with the Indian Gaming Regulatory Act, applicable Tribal laws and regulations, and the Tribal-State Compact ("Compact") between the Tribe and the State of Arizona.

IV. FINANCING

A. Loan; Credit Agreement

Manager agrees on the terms and conditions set forth in this Article IV to make available a loan ("Loan") to the Tribe in an aggregate amount

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to the Tribe in relation to the construction of the Tribe's temporary facility and said sum has been paid in full by the Tribe. The financing provided by Manager to Tribe shall be made in accordance with the Credit Agreement attached hereto as Exhibit A. Manager shall make the Loan pursuant to the Credit Agreement within thirty (30) days of receipt of approval of this Agreement by the Chairman of the National Indian Gaming Commission.

B. Limitation on Use of Loan

Manager and the Tribe agree that the loan of funds will only be used by the Enterprise for purposes of funding contract Federal approvals, Compact negotiations and approval, start-up legal fees and expenses, construction, furniture, fixtures, and equipment costs for the Enterprise as applicable, and working capital funds as agreed.

C. Interest

The Tribe shall pay interest to the Manager on the outstanding and unpaid principal

b4 amount of the loans made under this Agreement at a rate per annum equal to

the Prime Rate. Prime Rate shall be as defined in the Wall Street Journal on the earlier of (i) the date this Agreement is approved by the Chairman of the National Indian Gaming Commission, or (ii) the date upon which funds are actually advanced to the Tribe. The interest rate shall be adjusted quarterly.

D. Repayment of Loan

1) The Tribe and Manager agree that repayment of the Loan, including interest, made

b7 pursuant to the Credit Agreement shall be amortized over a term d shall be made in accordance with the provisions of this Article IV. If Gross Receipts are insufficient to pay the interest on the loan as an operating expense, or if Net Distributable Profits are insufficient to pay the principal on the Loan during the term of this Agreement, at the expiration of the term of this

b4 Agreement Manager shall

. If this Agreement is terminated by the Tribe for any reason other than "for cause" as authorized under Article VII, the entire remaining unpaid balance of the Loan shall be immediately due and payable on the date of such termination.

2) Interest Repayment

All interest payments of the Enterprise, including but not limited to interest on the Loan, shall be an operating expense of the Enterprise pursuant to Article VI, Section A.

3) Principal Repayment of Tribe

All principal payments on the loan shall be made from the Tribe's share of Net Distributable Profits (hereinafter defined in Article VI, Section A).

E. Additional Capital

If, in the opinion of the Manager and Tribal Council, money in addition to that described above should be loaned to the Enterprise for the replacement of assets or for expanding or developing the Enterprise ("Additional Capital Expenses"), the Tribe shall make every reasonable effort to borrow the funds necessary to pay for such Additional Capital Expenses from commercial lending institutions or other financial sources. At the request of the Tribe in order to assist it in reaching a determination of whether or not such Additional Capital Expenses are necessary, Manager shall provide a detailed budget and expenditure proposal to the Tribal Council. Manager shall assist the Tribe in obtaining additional financing, if feasible, for additional development capital. To the extent Manager agrees in its discretion to loan additional money to the Tribe for such Additional Capital Expenses, such loan shall be upon terms substantially similar to those which Manager obligates itself to borrow the funds necessary to make such loan to the Tribe and the loan will be made pursuant to a modification to this agreement which shall be submitted to the NIGC for approval.

F. Incorporation of Terms

The Credit Agreement is incorporated herein by reference and shall be made subject to all the terms and conditions contained in this Agreement to the same extent and effect as if this Agreement was fully set forth and made a part of the Credit Agreement. This Agreement is made subject to all the terms and conditions contained in the Credit Agreement to the same extent and effect as if the Credit Agreement were fully set forth herein and made a part hereof. Notwithstanding any of the foregoing, if any provisions in the Credit Agreement are inconsistent with this Agreement, the Credit Agreement shall control.

V. MANAGEMENT OF THE ENTERPRISE

A. Distribution of Managerial Authority

To assure the proper and consistent management of the Enterprise, and to minimize the risk to Manager's loan to the Enterprise, Manager shall be vested with primary responsibility and authority for the start-up and day-to-day operation of the Enterprise. However, the Manager shall inform and consult with the Tribe through the following procedure:

1. The Tribe, through a written resolution adopted by its Tribal Council, shall designate a Tribal Gaming Commission which shall serve as the Tribe's liaison with the Manager. The authority of the Tribal Gaming Commission to act on the Tribal Council's behalf shall be stated in the resolution, a copy of which shall be provided to the Manager. The Tribal Gaming Commission shall, in all cases, report directly to and be under the direction of the Tribal Council, which Tribal Council shall have the sole authority to make approvals for the Tribe as and when required or permitted pursuant to this Agreement. The Tribal Gaming Commission shall be entitled to attend all meetings at which the operation and/or promotion of the Enterprise is formulated or

discussed; shall provide a means through which the Manager can regularly communicate with the Tribal Council concerning issues or problems that require, or may require, Tribal Council input; and shall serve as the Tribal Council representative.

2. The Manager shall meet with the Tribal Gaming Commission on a regular basis and shall consult with the Tribal Gaming Commission regarding the general policies of the business concerning employment, working conditions, employee training, expenditures, construction, improvements, procurement, publicity and similar matters. The Tribal Gaming Commission shall not have authority with respect to the day-to-day operation of the business.

3. The Manager shall in good faith attempt to resolve any grievances, complaints or disputes, that are brought to its attention. The Tribal Council will also notify the Manager in writing of any serious problems at Manager's address of record, so that manager may attempt to remedy the problem directly. Within thirty (30) days of receipt of such notice, unless the problem has been resolved, the Manager shall meet and confer in good faith with the Tribal Council to determine what remedial action, if any, is necessary.

B. <u>Management Duties</u>

In managing the Enterprise, Manager shall perform the following duties:

1. Logistical support, including but not limited to, the furnishing and management of (a) raw materials, food stuffs, beverages and related items; (b) equipment, furnishings and supplies; (c) setting an advertising budget which shall be subject to tribal approval and placing advertising (d) establishing operating days and hours of operation; (e) tools, maintenance and other support items incidental to the operation and management of the Enterprise; (f) prepare

financial statements and reports for the Enterprise; (g) pay all bills and expenses of the Enterprise; and (h) pay for the services of the independent auditor as set forth in Article V.G.

2. Personnel management, including the selection, hiring, training and supervision of all employees of the Enterprise, including security personnel. Training shall include, but not be limited to, a program of instruction for job applicants who are accepted for employment.

In order to maximize the benefits of the Enterprise to the Tribe, Manager shall give first preference to members of the Tribe and non-member spouses of Tribal members in hiring and promoting personnel employed by the Enterprise. Manager shall also give a hiring preference to other qualified Indians recommended by the Tribe. Special emphasis shall be placed on recruitment, training and placement of tribal members in and for management and supervisory positions.

Compensation and expenses of all personnel employed by the Enterprise, whether directly or indirectly, shall be commercially reasonable.

All "Key Employees" (as defined in IGRA) to be hired for positions which involve the handling of money must meet the minimum requirements for obtaining bonding; and all such employees shall be bonded or covered by a suitable theft insurance policy reasonably satisfactory to the Tribal Council and the Manager upon their commencing employment with the Enterprise unless the Tribal Council waives this requirement because of the expense involved. The cost of procuring bonds or the insurance policy shall be included in the operating expenses of the Enterprise.

Manager shall develop commercially reasonable personnel policies and procedures which, at a minimum, shall establish a grievance procedure to settle disputes between

Manager and employees. The policies and procedures shall be subject to approval by the Tribal Council, such approval not to be unreasonably withheld.

A background check shall be performed by the Tribal Gaming Commission as may be required by the Tribal-State Compact on Key Employees (as defined in IGRA) and Primary Management Officials (as defined in IGRA) and, to the extent required, filing the appropriate background materials with the National Indian Gaming Commission.

C. Tribe's Duties

The Tribe shall be responsible for providing fire protection services, emergency medical and law enforcement services as required in the Compact between the Tribe and the State of Arizona. The Tribe shall be responsible for paying the cost of increased public safety services. All costs actually incurred by the Tribe in providing these services shall be an operating expense.

D. Business Affairs

All business affairs in connection with the operation, management and maintenance of the Enterprise shall be the responsibility of Manager, who, subject to its duty to inform and consult with the Tribe as provided for in Article V, Paragraph A, shall have the full authority to act in order to fulfill its responsibilities under this Agreement. Manager's responsibilities in this regard shall include, but not be limited to, complying with all applicable provisions of the Internal Revenue Code and, if applicable, supplying the National Indian Gaming Commission with all information necessary to comply with the National Environmental Policy Act. Manager shall, subject to the Tribal Council's approval, designate an on-site general manager to assist it in fulfilling its obligations hereunder. The on-site general manager shall be an employee of the Enterprise. The salary and

fringe benefits of the on-site general manger shall be commercially reasonable. The on-site general manager's salary and employee benefits shall be deemed an operating expense.

E. Cash Management

Manager shall be responsible for supervising the handling and counting of funds collected from patrons of the Enterprise. Manager shall implement and maintain policies and procedures with respect to cash management and internal controls. The Tribal Council shall have the right to review and approve such cash management and internal controls policies and procedures before they are implemented, such approval not to be unreasonably withheld. At the expense of the Enterprise and subject to the Tribe's approval, Manager shall procure necessary record-keeping, bookkeeping, and accounting services associated with the handling of such funds. A qualified representative of the Tribe shall be entitled to participate in the physical receipt, counting and deposit of all gross receipts from the operation of the Enterprise. Said representative of the Tribe shall be compensated at a reasonable rate to be agreed upon by the parties hereto; said compensation shall be an operating expense of the Enterprise. At no time shall more cash than reasonably may be expected to be needed to meet the day's cash requirements be kept on the premises of the Enterprise. Such cash shall be locked in the office safe; the room in which the safe is located shall be equipped with coded access alarms and motion detectors by a security system. It shall be Manager's responsibility to assure that daily receipts are promptly, safely and securely transported to the depository agreed upon by the parties at least once a day by an approved armored transport carrier. All receipts shall be insured against theft.

F. Enterprise Bank Accounts

Manager and the Tribal Council shall agree upon a Federally-insured financial institution in which Enterprise funds shall be deposited and maintained. A general operating checking account which bears interest at a reasonable commercial rate will be established for the purpose of paying day-to-day operating expenses. A separate payroll accounting system, such as a bank-administered payroll system, shall be utilized, and routine transfers of funds from the Enterprise's general account shall be made to payroll sufficient to pay all employees of the operation. Each month, from the general account, all direct and indirect costs of the operation shall be paid, and the balance each month shall be divided and distributed as provided in Article VI, Paragraph (D). All checks drawn upon the account in excess of) shall require the signatures of a duly authorized representatives of Manager and Tribal Council. However, checks for prizes will not require the Tribal Council's signature. Manager shall provide the Tribe with a monthly financial statement of all transactions affecting the general account.

Upon agreement of Manager and the Tribe, cash in excess of that reasonably necessary to meet operating expenses and payroll between monthly distributions of profits may be invested and kept in interest-bearing accounts at one or more financial institutions insured by an agency of the Federal government. All interest earned on Enterprise funds shall be included in the revenues of the Enterprise.

G. Accounting/Audit

1. Manager shall provide a certified annual audit for the Enterprise to be conducted by an accounting firm selected by the Tribe within one hundred twenty (120) days from the close of the fiscal year of the Tribe, which at present is January 1, through December 31. A copy

of the audit and accompanying documents shall be provided to both the Tribal Council and Manager immediately upon completion. The cost of the audit shall be an operating expense.

2. Manager shall maintain at the Enterprise office in the facility full and accurate books of account, kept on an accrual basis and maintained using generally accepted accounting principles consistently applied. This financial information will be provided to the Tribe not less frequently than on a monthly basis. At a minimum the books of account shall be maintained to allow the Enterprise, the Tribe and National Indian Gaming Commission to calculate the annual fee under 25 C.F.R. §514.1 and the books of account shall be susceptible to audit.

3. Duly authorized representatives of the Tribal Council shall have the right to immediately inspect, examine and copy such books and any other gaming related information at any time.

4. Each party shall have the right to independently audit said books at reasonable intervals at its own expense.

5. In addition to the accounting controls set-forth herein, the Manager shall develop a system of internal accounting and cash handling controls. The system shall be subject to review and approved by the Tribal Council's representative and such representative shall be duly qualified.

6. Manager shall provide the Tribe, on a weekly basis, a copy of its customary weekly manager's report with respect to the Enterprise.

7. The accounting system for the Enterprise shall provide for the calculation and payment of the Manager's Fee as described in Article VI.

8. Manager shall be responsible for the preparation of financial statements and reports, prepared in accordance with generally accepted accounting principles consistently applied, for the Enterprise on a monthly basis.

9. The accounting system shall provide for the allocation of shared expenses among the Tribe, the Manager and any other user of shared facilities and services.

H. Statement of Budget

Manager shall prepare an estimated annual budget for the Enterprise and submit same to the Tribal Council for review and approval at least thirty (30) days prior to the beginning of the fiscal year, or with respect to the initial year of operation, at least thirty (30) days prior to the opening of the Enterprise to the public. The Tribal Council shall have fifteen (15) business days from receipt of the estimated budget to object thereto. Failure of the Tribal Council to object to the estimated budget within the time allowed shall be deemed an approval of said budget. After approval of the annual budget, a determination of the amount of Net Distributable Profits (hereinafter defined) available for distribution shall be performed on a monthly basis as provided in Article VI, Paragraph (D).

I. Construction and Development of the Enterprise

1. **Architect and Supervisors; Plans.** An architect for designing the facilities, all materials, equipment, and labor, as necessary, as well as supervisors who will supervise the construction of the facilities will be hired by Manager within thirty (30) days of the execution hereof. The Tribal Council will be provided ample opportunity to review the plans of the gaming facility and to approve said plans prior to commencement of such construction, which approval will not be unreasonably withheld.

2. **Supervision, Development, and Improvements.** It is hereby specifically understood and agreed between the parties that Manager is granted responsibility to supervise the completion of all the development, improvements, and related activities undertaken pursuant to the terms and conditions of this Agreement. The costs of development of the gaming facility, including construction of the building, with the capacity to seat not less than eight hundred (800) people; supplying of furniture and furnishings; fixtures; equipment and machinery related to the gaming operation as permitted under the Compact and as mutually agreed; landscaping; and parking area, shall be paid by Manager out of the Loan made to the Tribe pursuant to the Development Agreement. Manager will make suitable arrangements for having as-built drawings made. Manager will see that all work, installation, and construction, be done timely and in a good and workmanlike manner in accordance with standard AIA contracts. Manager will ensure that the general contractor maintains an appropriate performance bond and that all construction is in conformity with the Uniform Building Code of 1988, the Uniform Mechanical Code of 1988, the Uniform Plumbing Code of 1988, the Uniform Fire Code of 1988, the National Electric Code and the Americans with Disabilities Act. The Tribal Council shall have the right to inspect all such work. Manager does hereby agree to pay from funds loaned to the Tribe all legitimate debts, claims, and liabilities in connection with such construction and improvements. All improvements, equipment installed, construction, and the like provided by the Manager for the purposes of this Agreement shall become the property of the Tribe on completion of construction.

3. **Construction Budget.** A detailed construction budget (hereinafter referred to as "Construction Budget") necessary to accomplish the foregoing shall be prepared and submitted to the Tribe within forty (40) days of the execution hereof. The Construction Budget shall be subject

to approval within thirty (30) days of submission to Tribe, which approval the Tribe will not unreasonably withhold, and in the absence of receiving approval within thirty-five (35) days, shall be deemed approved. Said Construction Budget will, inter alia, reflect in the aggregate all costs, fees, and expenses of construction.

4. **Preference in Work.** In order to maximize the benefits of the Enterprise to the Tribe, Manager shall give first preference in construction and development work to qualified members of the Tribe and qualified non-member spouses of Tribal members. Manager shall also give a hiring preference to other qualified Indians recommended by the Tribe. These provisions notwithstanding, Manager shall conduct a fair open bid process for such work which is fully compliant with all applicable laws.

5. **Approval Authority.** The Tribal Council shall have the right to approve the selection of the construction contractor and construction supervisor, such approval not to be unreasonably withheld.

VI. DISTRIBUTION OF ENTERPRISE REVENUES

A. Definitions

(1) "Gaming Operations" shall mean all business operations directly connected with the conduct of Class II or Class III gaming at the Enterprise.

(2) "Gaming Operation Expenses" shall mean Operating Expenses directly attributable or allocable to Gaming Operations.

(3) "Gross Receipts" shall mean all the revenues of any kind resulting from operation of the Enterprise, inclusive of revenues derived from gaming and non-gaming sources.

(4) "Gross Receipts From Gaming Operations" shall mean all revenues directly derived from the conduct of Gaming Operations.

(5) "Gross Receipts From Non-Gaming Operations" shall mean all revenues, including, but not limited to, revenues from the sale of food and beverages at the Enterprise, derived from operations other than Gaming Operations.

(6) "Net Distributable Profits" shall mean the amount by which Gross Receipts exceed Operating Expenses.

(7) "Net Distributable Profits From Gaming Operations" shall mean the amount by which Gross Receipts from Gaming Operations exceed Gaming Operation Expenses.

(8) "Net Distributable Profits From Non-Gaming Operations" shall mean the amount by which Gross Receipts From Non-Gaming Operations exceed Non-Gaming Operation Expenses.

(9) "Non-Gaming Operation Expense" shall mean operating expenses directly attributable or allocable to Non-Gaming Operations.

(10) "Operating Expenses" shall include payment of all interest, depreciation, pre-opening costs, cost of goods sold, prizes and other gaming wins paid out, salaries, wages and employee benefits, payroll and other taxes or other governmental levies, permits and licenses, advertising, promotion, fees and expenses of third-party contractors and agents, bus and other transportation and coordinator costs, auto and travel expense, maintenance costs and repairs, equipment leases, uniforms, office expense, printing, supplies, donations, utilities, rent, insurance of all types, uninsured legal judgments and settlements, maintenance, legal and accounting expenses, and an assessment to fund the regulatory functions of the Tribal Gaming Commission, but in no

b4 event shall such assessment exceed per year, which amount shall be adjusted annually to reflect the change in the Consumer Price Index as determined by the U. S. Bureau of Labor Statistics. Management fees paid pursuant to Article VI(d) shall not be operating expenses under this Agreement.

(11) "Gross Receipts," "Operating Expenses" and "Net Distributable Profits" shall all be computed in conformance with generally accepted accounting principles consistently applied.

B. Depreciation and Pre-Opening Expenses.

1. For purposes of calculating depreciation pursuant to this Agreement, the parties hereby stipulate and agree that the Gaming Facility (building) shall be depreciated over thirty (30) years and all furnishings, fixtures and equipment and other assets shall be depreciated over five (5) years.

2. The parties to this Agreement stipulate and agree that all pre-opening costs will be expensed over the first year of operations of the Enterprise as an operating expense.

C. Repayment of the Loan

In the event insufficient revenues exist for repayment of the loan in any given month, the accrued balance due on the debt shall be carried forward to succeeding months until paid.

D. Disbursement of Revenues

Subject to Article VI, Section E, all Gross Receipts of the Enterprise shall first be applied to meeting the Enterprise Operating Expenses. A determination of the amount of Net Distributable Profits available for distribution to the parties shall be performed on a monthly basis by the twentieth day of the following month, and the Net Distributable Profits shall thereupon be distributed to the parties monthly in accordance with the following schedule:

1. **Gaming Operations.**

(a) During the term of this Agreement, the Manager shall receive, as a monthly management fee, a sum equal to of the Net Distributable Profits from Gaming Operations less an amount equal to of the Costs of the Gaming Facility divided by twelve (12). For purposes of this Article, the "Gaming Facility" shall mean the permanent improvements constructed in connection with the development of the Enterprise and the "Costs of the Gaming Facility" shall be determined and certified by the certified public accountant for the Enterprise within fifteen (15) days after the Enterprise opens to the public for business.

(b) In the event the term of this Agreement is extended for as provided in Article II.A.(2), Manager shall receive as a monthly management fee during

(c) All Net Distributable Profits from Gaming Operations not paid to the Manager as a management fee shall be distributed monthly to the Tribe.

2. **Non-Gaming Operations.**

(a) During the term of this Agreement, the Manager shall receive, as a monthly management fee, a sum equal to of the Net Distributable Profits from Non-Gaming Operations.

(b) In the event the term of this Agreement is extended for as provided in Article II.A.(2), Manager shall receive as a monthly management fee during ( ) of the Net Distributable Profits from

b4 Non-Gaming Operations and,

of the Net Distributable Profits from Non-Gaming Operations.

(c) All Net Distributable Profits from Non-Gaming Operations not paid to the Manager as a management fee shall be distributed monthly to the Tribe.

E. Guaranteed Payment

Notwithstanding anything else to the contrary in this Agreement, commencing upon the term of this Agreement as defined in Article II, Section A, the Tribe shall receive a guaranteed b4 payment from Manager in the amount of per month. This guaranteed payment shall have preference in payment over the retirement of enterprise construction or development debt. All guaranteed payments shall be treated as an advance against Tribe's future Net Distributable Profit; provided, however, that such guaranteed payment shall be made to Tribe on a monthly basis irrespective of the availability of Net Distributable Profits.

VII. TERMINATION FOR CAUSE

A party may terminate this Agreement "for cause", which shall be defined as follows:

A. Theft

Committing or knowingly allowing to be committed any act of theft or embezzlement; however, theft or embezzlement by an employee of Manager without Manager's knowledge shall not be cause for termination of this Agreement if, within ten (10) days after being notified of said act, Manager repays to the Enterprise an amount equal to the amount which the Tribe has reasonable cause to believe was embezzled. In the event that an arbitrator or a court of competent jurisdiction later determines that a larger amount was taken, Manager shall pay to the Enterprise an amount equal to the difference between the amount previously paid and the amount

determined by the court to have taken. If said arbitrator or court determines that either a smaller amount was taken or that no funds were taken, Manager shall be entitled to reimbursement from the Enterprise of an amount equal to the difference between the amount previously paid by Manager and the amount determined by the court to have been taken.

B. Breach

Committing or allowing to be committed any material breach of this Agreement. A material breach shall include, but not be limited to, a failure of either party to perform any duty or obligation imposed on it under the terms and conditions of this Agreement. Neither party may terminate this Agreement on grounds of material breach unless it has first provided written notice to the other party of its intention to declare a default and to terminate this Agreement, and the defaulting party fails to cure or take substantial steps to cure the default within thirty (30) days of receipt of such notice (ten (10) days in the case of monetary default). The discontinuance or correction of the material breach shall constitute a cure thereof.

C. CHAPTER 7 BANKRUPTCY

If Manager files or consents to the filing against it of a petition in bankruptcy for an order of relief pursuant to Chapter 7 of the United States Bankruptcy Code or has a petition in bankruptcy under Chapter 7 filed against it, which petition is not dismissed within ninety (90) days.

VIII. NOTICE

All notices, consents or other communications shall be in writing and shall be deemed to have been duly given when delivered personally or by messenger, or upon receipt when mailed by registered or certified mail, return receipt requested, postage pre-paid, or when received via

facsimile, telex or other electronic transmission, in all cases addressed to the party for whom intended at its address set forth below:

To the Tribe:	Jeri Johnson, Chairperson Tonto Apache Indian Tribe Tonto Apache Reservation #30 Payson, AZ 85541
with a copy to:	Glenn Feldman, Esq. O'Connor, Cavanagh, Westover, Killingsworth & Beshears One East Camelback Road, Suite 1100 Phoenix, AZ 85012
To the Manager:	James F. Ahearn, Vice President and Director of Operations Capital Gaming Management, Inc. 2701 E. Camelback Road, Suite 484 Phoenix, AZ 85016
with a copy to:	Edward M. Tracy, President and Chief Operating Officer Capital Gaming International, Inc. Bayport One, Suite 250 8025 Black Horse Pike W. Atlantic City, NJ 08232
with a copy to:	William S. Papazian, Vice President and General Counsel Capital Gaming International, Inc. Bayport One, Suite 250 8025 Black Horse Pike W. Atlantic City, NJ 08232

or to such other address as a party shall have designated by notice in writing to the other party given in a manner provided by this Article VIII.

IX. COVENANT OF GOOD FAITH AND FAIR DEALING

Manager and the Tribe hereby specifically warrant and represent to each other that neither shall act in any manner which would cause this Agreement to be altered, amended, modified, canceled, or terminated (except for cause) without the consent of the other. Manager shall not assign this Agreement without the Tribe's consent. The Tribe and Manager further warrant and represent that they shall take all actions necessary to ensure that this Agreement shall remain in good standing at all times and will fully cooperate with each other in achieving the goals of this Agreement, including resisting any attempt by the State or by local governments to challenge the Tribe's authority to conduct gaming operations on tribal trust land.

X. INTERFERENCE IN TRIBAL AFFAIRS

Manager shall not directly or indirectly interfere with, become involved in, or attempt to influence the internal affairs of the Tribe, its members, or its tribal government.

XI. INSURANCE

b4/ Manager shall maintain public liability insurance in the amount of at least

b4 per occurrence. Manager shall also maintain insurance on all Enterprise employees while such employees are engaged in any activity, on or off the premises of the gaming Enterprise, which is properly within the scope and in the course of their employment with Manager pursuant to this Agreement. Manager shall also keep the buildings, improvements, and contents herein insured for their full replacement value against loss or damage by fire, theft and/or vandalism with extended coverage endorsement.

The Tribe and Manager shall be named as co-beneficiaries of all policies and Manager will provide to the Tribal Representative written evidence satisfactory to the Tribe of such coverage. Said insurance shall be an operating expense.

XII. AUTHORITY TO EXECUTE

Each party warrants to other that it has full authority to execute this Agreement and will, upon written request by the other party, provide satisfactory written evidence of such authority to the extent that either represents or act for interests other than its own.

XIII. NO PRESENT LIEN OR LEASE

The parties to this Agreement agree and expressly warrant that this Agreement is not a lease and does not convey to Manager any present interest whatever in the building or property on which the Tribe's Enterprise is located, or any proprietary interest in the Enterprise itself.

XIV. DISPUTES/ARBITRATIONS

A. Arbitration

In the event of a dispute with regard to the interpretation or enforcement of this Agreement or with respect to any consent or approval required to be made by either party which is not resolved between the parties informally within ten (10) days after notice by either party to the other, the matter shall be referred to binding arbitration to be conducted in accordance with the Rules of the American Arbitration Association (the "AAA"). The arbitration shall take place in Phoenix, Arizona, or such other place as the parties may agree. In such arbitration proceeding each party shall appoint an arbitrator within ten (10) days of the commencement of the arbitration and the two

arbitrators shall mutually appoint a third arbitrator within twenty (20) days of their appointment. If either party fails or refuses to appoint an arbitrator, the arbitrator appointed by the other party shall be the sole arbitrator. If the two arbitrators are unable to agree on the appointment of a third arbitrator within twenty (20) days, the third arbitrator will be appointed by the AAA. The decision of a majority of the members of the arbitration panel shall be final, binding and unappealable. The costs of the arbitration shall be borne equally by the parties, unless the arbitration panel rules otherwise.

B. Judicial Enforcement of Arbitration Award

An arbitration award rendered under Section A above may be enforced through appropriate judicial proceedings initiated in the United States District Court for the District of Arizona. In the event that the United States District Court determines that it lacks jurisdiction over that proceeding, judicial enforcement may be sought in another court of competent jurisdiction.

C. Limited Waiver of Sovereign Immunity

1. By this Agreement, the Tribe does not waive, limit or modify its sovereign immunity from unconsented suit except as set forth below.

2. The Tribe does grant a limited waiver of its sovereign immunity as to any claim if, and only if, each and every one of the following three conditions is met:

(i) The claim is made by Manager, and not by any other person, corporation, partnership, or entity whatsoever;

(ii) The claim alleges a breach by the Tribe of one or more of the specific obligations of duties expressly assumed by it under the terms of this Agreement; and

(iii) The claim seeks either:

(a) some specific action, or discontinuance of some action, by the Tribe, to bring the Tribe into full compliance with the duties and obligations expressly assumed by the Tribe in this Agreement; or

(b) payment of a monetary obligation arising from such noncompliance only, which will be payable only from the Tribe's revenues derived from the operation of the Tribal gaming enterprise, and not from any other source or other asset or property of the Tribe.

3. Under this limited waiver of sovereign immunity, the Tribe agrees to submit disputes arising under this Agreement to arbitration under Section A and to judicial enforcement of arbitration decision under Section B, to submit to the jurisdiction of such tribunals, and to give full legal effect to such decisions.

D. <u>Court Action</u>

In the event that the Tribe or the Manager, acting through any officer, agent or recognized official, by means of any judicial, legislative or administrative action not authorized under this Agreement or, through the use of force or physical intimidation of threats of physical intimidation, effectively prevents the regularly scheduled gaming operations from proceeding, the other party may disregard the arbitration provisions above and commence an action in Federal court, or an appropriate court of competent jurisdiction, with appropriate venue, for purposes of enjoining such activity and to obtain specific performance of the terms of this Agreement.

E. <u>Disputes Between Manager and Customers</u>

Any dispute between the Manager and any customers of the Enterprise shall be resolved consistently with applicable procedures set-forth in an applicable Tribal ordinance. If no

such procedures exist, the dispute will be resolved by the Tribe's or Manager's attorney, as they may deem appropriate.

XV. SUCCESSORS

The benefits and obligations of this Agreement shall inure to and be binding upon the parties hereto, their heirs, successors and assigns; provided that (except as set forth in Article XIX, Section G(3)) any assignment of interest by Manager shall require the advance written consent of the Tribal Council and approval by applicable Federal authorities.

XVI. SEVERABILITY

In the event any portion of this Agreement is deemed unenforceable or void by any court of competent jurisdiction, then and in that event, all other aspects of this Agreement shall remain in full force and effect and the Agreement shall not fail due to any such determination.

XVII. TIME IS OF THE ESSENCE

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

XVIII. COMPLIANCE WITH TRIBAL REGULATIONS AND ORDINANCES

In carrying out its obligations under this Agreement, Manager agrees to comply with the duly-executed gaming Ordinance of the Tribe (as approved by the National Indian Gaming Commission) and with any and all other regulations or ordinances of the Tribe that are presently in effect or which may in the future be enacted, provided that said regulations or ordinances do not

impose financial burdens on the Enterprise or Manager which exceed industry standards. If a regulation or ordinance does impose a financial burden on the Enterprise or Manager in excess of industry standards, then the cost of the financial burden may be deducted as an offset against the fees and payments otherwise due from the Enterprise to the Tribe.

XIX. MISCELLANEOUS

A. Management of Enterprise

The Term "Enterprise" shall be defined to include the actual operation of all forms of Class II and Class III gaming activities as those activities are defined in the Indian Gaming Regulatory Act, P.L. 100-497 (Oct. 17, 1988), and all matters directly related thereto, such as the management and maintenance of the building within which the activities take place, the parking lot for patrons, and concessions located in the facility for sale of food and beverages.

Management shall have the right to assign to third parties the concessions for parking of patrons' vehicles, and sales of food and beverages, subject to the approval of the Tribe, such approval not to be unreasonably withheld.

B. Tax Matters

1. Notwithstanding anything in this Agreement to the contrary, it is the parties intent that Manager be an independent contractor, not a partner or joint venturer, providing professional gaming management services to the Tribe. Manager has no ownership interest in the Enterprise or the land upon which the Enterprise operates. In this regard, it is further agreed and understood that all employees of the Enterprise are employees of the Enterprise for tax purposes.

2. If any non-tribal government attempts to impose any tax on any party to this Agreement regarding the construction or operation of the Enterprise, both parties shall resist such

attempt. However, if a court of competent jurisdiction finally determines that any such tax is legally due from Manager based on its contractual interests under this Agreement, then such tax shall be deemed an operating expense, provided, however, that in no event shall the liability for or payment of Federal and/or state income taxes on Manager's share of Net Distributable Profits be an operating expense or an expense of the Tribe.

C. Parties' Approvals

Except as specifically provided to the contrary herein, on any occasion where approval of a party is required by this Agreement, and written request for approval is made to the other party, such approval shall be provided in writing within the time frame specifically provided, or if no time period is provided, within fourteen (14) days after receipt of written request for such. In the event that the party from whom such approval is sought neither approves nor disapproves within seven (7) days after the applicable time period ends, such inaction shall be deemed to be the equivalent of approval.

D. Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto and supersedes any prior agreement between the parties relating to this subject matter. Any amendment, change or modification to this Agreement must be signed by all of the parties hereto and will be subject to the approval of the Chairman of the National Indian Gaming Commission or his authorized designee.

E. Interested Parties

1. A list of all parties in interest to this Agreement, including corporate officers, directors and all stockholders, their residence and business addresses, occupations, dates of birth and social security numbers or equivalents thereof, is annexed hereto as Exhibit "B".

2. The parties represent that no payments have been made and agree that no payment will be made to any elected member of the tribal government or relative of any elected member of the tribal government or relative of any elected member of the tribal government for the purpose of obtaining or maintaining this Agreement or any other privilege for Manager. For purposes of this paragraph, "relative" means an individual who is related to an elected member of the tribal government as a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, sister-in-law, brother-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

3. The parties represent that no party in interest as defined in subparagraph (E)(1) above is an elected member of the tribal government or a relative, as defined in subparagraph (E)(2) above, of an elected member of the tribal government. Manager agrees that it will require any party in interest who is elected to the tribal government or whose relative is elected to the tribal government to divest himself or herself of his or her interest in the contract.

F. Tribal Tax

The Tribe agrees that no license, tax or other charge may be imposed by the Tribe upon Manager or upon any enterprise or assets thereof from which Manager derives revenues except for the assessment to fund the Tribal Gaming Commission as authorized under Article 6, Section A(10). In the event that the officially recognized governing body of the Tribe does in fact levy any

such license fee, tax or charge, and such tribal action is held valid by a court of competent jurisdiction, the Tribe agrees that any payment of such sums may be deducted as an offset against the fees and payments otherwise due from the Enterprise to the Tribe.

G. **Approvals**

1. **Tribal and Federal Approval**

This Agreement shall not be effective until all tribal and Federal action required hereunder have been obtained from duly recognized representatives of the Tribe and the Federal government.

2. **Binding Agreement**

Each party represents to the other that all actions necessary on their part in order to make this Agreement binding has been taken as of the date of execution hereof.

3. **Assignments and Sub-Contracts**

This Agreement cannot be assigned, nor sub-contracts entered into between Manager and a third party wherein the third party will have any responsibility for the enterprise or access to the proceeds of the operation, without the prior written consent of the Tribe. The Tribe acknowledges that Manager is a wholly-owned subsidiary of Capital Gaming and, as such, any transfer or sale of stock of Manager to Capital Gaming, or an entity owned or controlled by Capital Gaming, shall not be deemed an assignment, nor require the Tribe's approval. All other changes in ownership interest of Manager shall require the advance written approval of the Tribe, which consent will not unreasonably be withheld. Notwithstanding anything to the contrary contained in this Article XIX, Section G(3), any transfer or sale of five (5%) percent or more of Manager's stock will require a NIGC suitability determination under 25 CFR 537, as amended.

H. Commencement Date

All obligations, rights and duties arising from or required by this Agreement shall commence upon the date of approval of this Agreement by the Chairman of the National Indian Gaming Commission.

I. Exclusivity

The Tribe agrees that Manager shall be the exclusive agent and operator of the Enterprise and other activities as are reasonably related thereto such as pull tabs and other forms of Class II gaming activity, and all forms of Class III gaming activity as may be approved by Tribal-State Compact as that activity is defined in IGRA occurring on Indian lands as such term is defined in IGRA.

J. Acquisition of F,F&E

Manager agrees that all F,F&E acquisitions including, but not limited to, gaming equipment shall be acquired in commercially reasonable arms length transactions which shall be approved in advance by the Tribe and that the Manager shall notify the Tribe in writing of any proposed acquisition from an affiliate of Manager.

XX. EXECUTION IN QUADRUPLICATE

This Agreement is being executed in four original counterparts, one to be retained by each party and one to be submitted to the National Indian Gaming Commission. Each is equally valid.

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

TONTO APACHE INDIAN TRIBE

By: _____
Jeri Johnson, Chairperson

Approved:

NATIONAL INDIAN GAMING COMMISSION

By: _____
Harold Monteau, Chairman

BRITISH AMERICAN BINGO, INC.

By: _____
James F. Ahearn, Vice President
and Director of Operations

Approved:

CAPITAL GAMING INTERNATIONAL, INC.

By: _____
Edward M. Tracy, President
and Chief Operating Officer

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AMENDMENT NO. 1 TO SECOND AMENDED AND RESTATED MANAGEMENT DEVELOPMENT AGREEMENT

THIS AMENDMENT NO. 1 TO SECOND AMENDED AND RESTATED MANAGEMENT DEVELOPMENT AGREEMENT ("Agreement"), made this 11th day of January, 1995, by and between the Tonto Apache Indian Tribe (hereinafter referred to as "Tribe"), a federally recognized Indian Tribe, and British American Bingo, Inc. (now called "Capital Gaming Management, Inc."), a business corporation incorporated under the laws of the State of New Jersey (hereinafter referred to as "Manager").

WITNESSETH:

The Tribe and Manager hereby agree to amend the Agreement as follows:

1. The first sentence of Article II.A.(3) is hereby amended in its entirety to read as follows:

   "Except as set forth in Article VI, Section D(1)(b) and D(2)(b), all terms and conditions of the Agreement shall remain in full force and effect during the term of such extension."

2. The last sentence of Article IV, Section F, is hereby amended in its entirety to read as follows:

   "Notwithstanding any of the foregoing, if any provisions in the Credit Agreement are inconsistent with this Agreement, this Agreement shall control."

3. Except as amended hereby, all other terms and provisions of the Agreement shall remain in full force and effect.

4. This Amendment No. 1 is being executed in four (4) original counterparts, one (1) to be retained by each party and one (1) to be submitted to the National Indian Gaming Commission. Each is equally valid.

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

TONTO APACHE INDIAN TRIBE

By: Jeri Johnson
Jeri Johnson, Chairperson

Approved:

NATIONAL INDIAN GAMING COMMISSION

By: Harold Monteau
Harold Monteau, Chairman

CAPITAL GAMING MANAGEMENT, INC.
(formerly known as British American Bingo, Inc.)

By: Edward M. Tracy
Edward M. Tracy, President and Director

Approved:

CAPITAL GAMING INTERNATIONAL, INC.

By: Edward M. Tracy
Edward M. Tracy, President, Chief Operating Officer and Director