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**AMENDED AND RESTATED  
GAMING FACILITY MANAGEMENT  
AGREEMENT  
BETWEEN  
THE MOHEGAN TRIBE OF INDIANS OF  
CONNECTICUT  
AND  
TRADING COVE ASSOCIATES**

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## **AMENDED AND RESTATED GAMING FACILITY MANAGEMENT AGREEMENT**

THIS AMENDED AND RESTATED GAMING FACILITY MANAGEMENT AGREEMENT has been entered into August 30, 1995, by and between the MOHEGAN TRIBE OF INDIANS OF CONNECTICUT and its permitted successors and assigns (the "Nation"), and TRADING COVE ASSOCIATES, a Connecticut partnership, and its permitted successors and assigns ("the Manager").

### **1. Recitals and Conditions Precedent.**

1.1 The Mohegan Nation has occupied lands in the State of Connecticut for time immemorial. The Nation existed long before the Declaration of Independence and the adoption of the Constitution of the United States. Although the Nation had entered into treaty relations with the Colony of Connecticut, it never had a formal treaty relationship with the United States. In 1984 the Nation submitted a documented petition for federal recognition to the Secretary of the Interior and received a proposed negative finding in 1989.

Trading Cove Associates, through its own resources and from other sources, assisted the Nation in responding to the negative finding. The Nation's petition was approved by the Secretary in 1994.

Trading Cove Associates assisted the Nation in economic development planning, and in negotiations with the federal government and the State of Connecticut and other governmental and non-governmental bodies as to the matters which are essential to the successful implementation of those plans, including Compact negotiations with the State of Connecticut, and identifying and facilitating acquisition of a purchase option for land which is well suited for development as a site for the Gaming Enterprise. Trading Cove Associates made these commitments to the Mohegan Nation in partial consideration for the commitment of the Nation, subject to federal approval, to enter into this Agreement. Today the Nation is a federally recognized Indian tribe. When it is acquired in trust by the United States, the Nation will exercise sovereign governmental powers over the land described in Exhibit A hereto (the "Property"), located in the State of Connecticut (the "State").

1.2 At the time of execution of this Agreement, the Property is owned by UNC Incorporated, a Delaware corporation. The Nation holds a valid and binding option to purchase the Property. The Nation will take all actions necessary and proper to perfect an application for transfer of the Property to the United States. Upon approval of that application by the Bureau of Indian Affairs, the Nation will exercise the option, acquire the Property, and deed it to the United States. The

successful completion of this transfer of the Property to the United States shall be a condition precedent to the obligations of the Manager. At all times relevant to the duties and responsibilities of the Manager to operate Gaming on the Property, the Property shall be owned by the United States of America in trust for the Nation. The Nation desires to use the Property to improve the economic conditions of its members, to enable it to serve the social, economic, educational and health needs of the Nation, to increase Nation revenues and to enhance the Nation's economic self-sufficiency and self-determination.

1.3 The Nation is seeking technical experience and expertise for the operation of the Gaming Enterprise and instruction for members of the Nation in the operation of the Gaming Enterprise. The Manager is willing and able to provide such experience, expertise and instruction.

1.4 The Nation wants to grant the Manager the exclusive right and obligation to develop, manage, operate and maintain the Gaming Enterprise and any expansion thereof, whether on lands held by the United States of America in trust for the Nation as described in Section 1.2 above, or on land hereafter placed in trust, and to train Nation members and others in the operation and maintenance of the Gaming Enterprise during the terms of the Amended and Restated Development and Construction Agreement and the Management Agreement and conforming with the provisions of this Agreement. The Manager wishes to perform these functions exclusively for the Nation as limited in Section 3.3 below.

1.5 This Agreement is entered into pursuant to the Indian Gaming Regulatory Act of 1988, PL 100-497, 25 U.S.C. §§ 2701, et seq. (herein the "IGRA").

2. **Definitions.** As they are used in this Agreement, the terms listed below shall have the meaning assigned to them in this Section:

"Amended and Restated Gaming Facility Development and Construction Agreement" or "Development and Construction Agreement" shall mean that certain Development and Construction Agreement of even date, by and between Manager and the Nation providing the terms under which Manager will develop the Gaming Facility, including without limitation, design, construction and furnishing and equipping same.

"Business Board" is a committee which shall consist of an equal number of representatives of the Nation and the Manager but in no event more than four persons. Initially there shall be one Nation's Representative and a Manager's Representative. Upon written agreement of the parties the Business Board may be expanded to four members. Each member of the Business Board may designate another person to exercise his or her authority by written notice signed by such Business Board member and given in accordance with Section 7.1 of this

Agreement. The Business Board shall remain active during the entire term of this Agreement.

"Bureau of Indian Affairs" or "B.I.A." is the Bureau of Indian Affairs of the Department of the Interior of the United States of America.

"Cash Maintenance Account" means the cash collateral account required to be established by Section 4.08 of the Senior Secured Note Indenture.

"Class II Gaming" shall mean Class II Gaming as defined in the IGRA.

"Class III Gaming" shall mean Class III Gaming as defined in the IGRA.

"Collateral Agreement" shall mean other agreements between the parties as provided by 25 C.F.R §502.5.

"Commencement Date" shall mean the first date that the Gaming Facility is Completed (as that term is defined in the Senior Secured Note Indenture), open to the public and that Gaming is conducted in the Gaming Facility pursuant to the terms of this Agreement. The Manager shall memorialize the Commencement Date in a writing signed by the Manager and delivered to the Nation, the NIGC, and to the Area Director, Eastern Area Office, B.I.A.

"Compact" shall mean the tribal-state Compact entered into between the Nation and the State of Connecticut pursuant to the IGRA as the same may, from time to time, be amended, or such other Compact as may be substituted therefor.

"Completion Date" shall mean the date upon which Manager receives (i) an architect's certificate from the Architect identified in the Development and Construction Agreement as having responsibility for the design and supervision of construction, equipping and furnishing of the Gaming Facility certifying that the Gaming Facility has been constructed substantially in accordance with the Plans and Specifications; (ii) certification from Manager (or the division, department or designee of Manager having responsibility to assure compliance with any operational standards) stating that the Gaming Facility is in substantial compliance with any such standards; and (iii) certificates of such professional designers, inspectors or consultants or opinions of counsel, as Manager may determine to be appropriate, verifying construction and furnishing of the Gaming Facility in substantial compliance with all Legal Requirements.

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

(i) written approval of this Agreement is granted by the Chairman of the NIGC;

(ii) written approval of a Nation Gaming Ordinance in form and substance satisfactory to Manager is granted by Chairman of the NIGC;

(iii) Manager has received a certified copy of the ratifying Resolution which effectively confirms that it is the law of the Nation that the Management Agreement, Development and Construction Agreement, Financing Agreements, and the exhibited documents attached thereto are the legal and binding obligations of the Nation, valid and enforceable in accordance with their terms;

(iv) The Property is owned by the United States of America in trust for the Nation, and Manager has satisfied itself as to the Nation's control of the site and its suitability for construction of the contemplated Gaming Facility;

(v) The Compact is duly approved by the United States; and

(vi) Receipt by Manager of all applicable and required licenses.

The parties agree to cooperate and to use their best efforts to satisfy all of the above conditions at the earliest possible date. Manager agrees to memorialize the satisfaction of (v), (vi) and (vii) each as well as the Effective Date in a writing signed by Manager and delivered to the NIGC.

**"Enterprise Personnel Policies"** shall mean the Mohegan Tribe Personnel Policies and Procedures Manual attached hereto as Exhibit G.

**"Financing Agreements"** shall mean the Senior Secured Note Indenture, the Senior Secured Notes, the Subordinated Notes, the Note Purchase Agreement or any other agreement referred to in such agreements by which funds are advanced to the Authority the proceeds of which are to be used exclusively to develop, design, construct, furnish, equip and provide start-up and working capital for the Gaming Enterprise.

**"Furniture, Trade Fixtures, and Equipment"** shall mean all furniture, trade fixtures and equipment required or used in the operation of the Gaming Enterprise in accordance with the plans and specifications of the Gaming Facility.

**"Gaming"** shall mean any and all activities defined as Class III Gaming under the IGRA or authorized under the Compact, but shall not include Class II Gaming.

**"Gaming Authority" or "Authority"** shall mean the Mohegan Tribal Gaming Authority, including the Director of Regulation and the Regulatory staff of the Director of Regulation, the Tribal Council, or any other body or agency of the Nation with the authority to regulate or exercise any other governmental power of the Nation over Gaming and related resort and entertainment facilities in accordance with the Nation's Gaming Ordinance, the Gaming Authority Ordinance, the Mohegan Tribal Constitution, the Compact, the IGRA or other applicable law together with any subdivision, agency, subunit or Subsidiary thereof and any successor and assignee thereto.

**"Gaming Authority Ordinance"** shall mean the ordinance enacted pursuant to Section XIII, Section 1 of the Mohegan Tribal Constitution.

**"Gaming Enterprise" or "Enterprise"** is any commercial enterprise of the Nation authorized by the IGRA and/or the Compact and operated and managed by Manager in accordance with the terms and conditions of this Agreement to engage in Gaming; and any other lawful commercial activity related to Gaming allowed in the Gaming Facility including, but not limited to, Automatic Teller Machines ("ATM"), and the retail sale of food, beverages, tobacco, gifts and souvenirs. The Gaming Enterprise includes any building or accommodation used for Class III Gaming and related on-site retail sales owned by the Nation or any instrumentality of the Nation related to Class III Gaming wherever situated, but shall not include any hotel or resort properties adjacent to or near the Gaming Facility or the Enterprise. The Nation shall have the sole proprietary interest in and responsibility for the conduct of all Gaming conducted by the Gaming Enterprise, subject to the rights and responsibilities of the Manager under this Agreement.

**"Gaming Facility"** shall mean the buildings, improvements, and fixtures, now or hereafter located therein or thereon and associated and adjacent real property owned by the Nation, or in which the Nation has an interest, within which the Gaming Enterprise will be housed, all as located on the Property. Upon the satisfaction of the conditions precedent, as set forth in Section 1. 2, title to the Property and the Gaming Facility shall merge and continue to be held by the United States of America in trust for the Nation.

**"General Manager"** shall mean the person employed to direct the operation of the Gaming Facility.

**"Generally Accepted Accounting Principles" or "GAAP"** means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession.

**"Gross Gaming Revenue" or "Win"** shall mean the net win from Gaming activities which is the difference between Gaming wins and losses before deducting costs and expenses, determined in accordance with GAAP consistently applied.

**"Gross Revenues"** shall mean all revenues of any nature (but not including any Class II Gaming revenues) derived directly or indirectly from the Gaming Enterprise including, without limitation, Gross Gaming Revenue (Win), interest earned on bank accounts established for the deposit of Gaming receipts, food and beverage sales and other rental or other receipts from lessees, sublessees, licensees and concessionaires (but not the gross receipts of such lessees, sublessees, licensees or concessionaires), and revenue recorded for Promotional Allowances, determined in accordance with GAAP consistently applied.

**"Hard Count"** shall mean the count of the coin or tokens in a slot machine drop bucket.

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

**"Interest and Excess Cash Flow Account"** shall have the meaning as set forth in the Senior Secured Note Indenture.

**"Legal Requirements"** shall mean singularly and collectively all applicable laws including without limitation the Nation's Gaming Ordinance, all other laws or regulations of the Nation, the IGRA, the Compact and applicable federal and Connecticut statutes.

**"Manager's Representative"** shall mean the person designated by the Manager to sit on the Business Board. The Manager's Representative shall serve as the liaison between the Manager and the Nation during the term of the Agreement.

**"Minimum Balance"** shall mean that sum of money agreed to by the Business Board to be maintained in the Gaming Enterprise Bank Account(s) to serve as working capital for Gaming Facility operations. The Minimum Balance may be adjusted by the Business Board at any time after the Commencement Date.

4 **"Minimum Priority Payment"** shall mean the amount of  
to be paid as provided in Section 6.4 of this  
Agreement.

**"Nation Gaming Ordinance" or "Mohegan Nation Gaming Ordinance"** is the ordinance and any amendments thereto, and all related or implementing ordinances, including without limitation, the Gaming Authority Ordinance, which

are enacted by the Nation to authorize and regulate gaming on the Property pursuant to the IGRA.

**"Nation"** shall mean the Mohegan Tribe of Indians of Connecticut, a federally recognized Indian tribe, its permitted successors and assigns, including the Gaming Authority or any other any subordinate body, agent, entity, political subdivision, agency, or committee thereof, or any corporation wholly owned thereby created pursuant to any resolution or ordinance of the Nation.

**"Nation's Representative"** shall mean the person designated by the Nation to sit on the Business Board. The Nation's Representative shall serve as the liaison between the Nation and the Manager during the term of this Agreement.

**"National Indian Gaming Commission" or "NIGC"** is the commission established pursuant to 25 U.S.C. § 2704.

**"Net Revenues (gaming)"** shall mean Gross Gaming Revenue (Win) from Class III gaming, less all gaming related Operating Expenses, excluding the Management Fee, determined in accordance with GAAP consistently applied.

**"Net Revenues (other)"** for the purposes of this Agreement shall mean Gross Revenues, of the Gaming Enterprise from all other sources (excluding Class II Gaming), other than Gaming in support of Class III gaming, such as food and beverage, entertainment, and retail, less all related Operating Expenses, excluding the Management Fee, and less the retail value of Promotional Allowances and less the following revenues actually received by the Gaming Enterprise and included in Gross Revenues: (i) any gratuities or service charges added to a customer's bill; (ii) any credits or refunds made to customers, guests or patrons; (iii) any sums and credits received by the Gaming Enterprise for lost or damaged merchandise; (iv) any sales, excise, gross receipt, admission, entertainment, tourist or other taxes or charges (or assessments equivalent thereto, or payments made in lieu thereof) which are received from patrons and passed on to a governmental or quasi-governmental entity; (v) any proceeds from the sale or other disposition of furnishings and equipment or other capital assets; (vi) any fire and extended coverage insurance proceeds other than for business interruption; (vii) any condemnation awards other than for temporary condemnation; (viii) any proceeds of financing or refinancing; and (ix) any interest on the Replacement Reserve Fund, determined in accordance with GAAP consistently applied, and 25 U.S.C. § 2703 (9). The term "Net Revenues" without reference to "(gaming)" or "(other)" shall mean the aggregate of Net Revenue (gaming) and Net Revenue (other).

**"Note Purchase Agreement"** shall mean the Financing Agreement(s) evidencing the terms by which the Authority, on behalf of the Nation, agrees to sell Subordinated Notes to purchasers in exchange for the receipt of funds.

**"Operating Expenses"** shall mean expenses of the operation of the Gaming Enterprise determined in accordance with GAAP, consistently applied. Operating Expenses shall include, without limitation: (i) all accrued interest expense (whether or not distributed and whether or not deposited including deposits into the Interest and Excess Cash Flow Account as that term is defined in the Senior Secured Note Indenture) with respect to interest on the Senior Secured Notes and the Subordinated Notes; (ii) depreciation and amortization; and (iii) any bond premium incurred pursuant to the Senior Secured Note Indenture.

**"Project Costs"** means: (i) all costs of developing, designing, constructing, equipping and furnishing the Gaming Facility, including costs related to land acquisition, professional services, pre-opening costs, and initial operating capital; (ii) subject to Article 6.9, all start up and operating costs of the Gaming Authority until the Commencement Date; and (iii) all financing fees and expenses, interest payments and any scheduled principal payments, prior to the Commencement Date; provided that all Project Costs shall be allocated in accordance with GAAP, consistently applied.

**"Promotional Allowances"** shall mean the retail value of transportation, complimentary hotel accommodations, food, beverages, merchandise, chips, tokens, shows, or services provided to patrons for promotional purposes.

**"Property"** shall mean the parcel of land described in Exhibit A, or such other parcel, approved by Manager, to be held by the United States of America in trust for the Nation.

**"Senior Secured Note Indenture"** means that certain Indenture by and between the Authority and the Trustee, pursuant to which the Senior Secured Notes are issued.

**"Senior Secured Notes"** means the Authority's Series A Senior Secured Notes and Series B Secured Notes, issued by the Authority pursuant to the Note Purchase Agreement.

**"Soft Count"** shall mean the count of the contents in a drop box (Tables) and all non-coin revenue and credits from slot machines.

**"Subordinated Notes"** means the Subordinated Notes issued by the Authority pursuant to the Note Purchase Agreement.

**"Trade Fixtures"** shall mean those fixtures or equipment attached to the building which are used to conduct, support or facilitate the conduct of Gaming, including, but not limited to: slot machines, gaming tables, gaming equipment

cabinets, coin, cash and chip counting machines, computers, computer monitors and related equipment, cash registers, safes, surveillance equipment, television cameras, monitors and recorders, audio and musical instruments, equipment and speakers, and stoves, ovens, cabinets, refrigerators, freezers, and other kitchen equipment. Decorative fixtures, railings, lights, flooring, plumbing fixtures, sinks, toilets, and all other real property fixtures are not trade fixtures and shall not be subject to any lien or encumbrance.

"**Tribal Council**" shall mean the Mohegan Tribal Council created pursuant to the Nation's Constitution or, at the option of the Nation, a designee agency, committee, corporation or council created pursuant to any resolution or ordinance of the Mohegan Tribal Council.

"**Trustee**" means the trustee, designated under the Senior Secured Note Indenture.

3. **Covenants.** In consideration of the mutual covenants contained in this Agreement, the parties agree and covenant as follows:

3.1 **Engagement of Manager.** The Nation hereby retains and engages Manager as an independent contractor for the purposes of managing the Gaming Enterprise and training Nation members and others in the management of the Gaming Enterprise. Nothing contained herein grants or is intended to grant Manager a titled interest to the Gaming Facility or to the Gaming Enterprise. The Manager hereby accepts such retention and engagement and promises to use its best efforts to promote and manage the Gaming Enterprise and to train Nation members.

3.2 **Term.** This Agreement shall become effective on the Effective Date. The term of this Agreement shall begin on the Commencement Date and continue for a period of

3.3 **Exclusivity of Operations.** Except as otherwise mutually agreed, the Manager and the Nation agree that during the term of this Agreement neither the Manager nor any affiliated or controlled entities will establish or operate any other Gaming Facility in Connecticut or Rhode Island without the written consent of the Nation, which consent shall not be unreasonably withheld. Nothing contained herein shall impair Manager's right to develop, own and operate gaming facilities outside Connecticut or Rhode Island. During the term of the provisions of this Agreement relating to management of gaming (the "gaming term"), the Nation shall not, without the prior written approval of the Manager, which consent shall not be unreasonably withheld, conduct gaming at any location other than the Property.

3.4 **Establishment and Operation of Business Board.** Within seven days of the Effective Date: (i) the Manager shall designate the Manager's Representative and notify the Nation pursuant to Section 7; (ii) the Nation shall designate the Nation's Representative and notify the Manager pursuant to Section 7. The Business Board shall have the obligations, rights and powers described in this Agreement. In order to be effective, any action of the Business Board must be the result of mutual agreement by the Business Board members or their designees. In the event mutual agreement cannot be reached, the appropriate action shall be determined in the manner provided in Section 16.3.

3.5 **Manager's Compliance With Law; Licenses.** The Manager covenants that it will at all times comply in all material respects with all Legal Requirements, including the Nation's Gaming Ordinance, the IGRA, the Compact, applicable Connecticut statutes and any licenses issued under any of the foregoing. The Manager, Manager's executive officers, and all other persons required by applicable law shall be licensed to operate the Gaming Enterprise pursuant to the Nation's Gaming Ordinance. The Nation shall not unreasonably withhold, withdraw, qualify or condition such licenses.

3.6 **Nation's Amendments to Nation's Gaming Ordinance.** The Nation covenants that any amendments made to the Nation's Gaming Ordinance will be a legitimate effort to ensure that Gaming is conducted in a manner that adequately protects the environment, the public health and safety, or the integrity of the Gaming Enterprise. The Nation further covenants that any amendments to the Nation's Gaming Ordinance will comply with the foregoing standard. Except as required by State or federal law, the Nation will not adopt any amendments to the Nation's Gaming Ordinance that would have a material adverse effect on the Manager's rights under this Agreement, the Development and Construction Agreement, the Financing Agreements, or any document executed by the parties related thereto. The Nation shall give Manager notice of the full text of any proposed amendment to the Gaming Ordinance at least 14 days before any such amendment will go into effect.

4 3.7A **Management Fee.** The Nation agrees to pay the Manager a fee (the "Management Fee") based on a percentage of Net Revenues (gaming) and Net Revenues (other), as defined in this Agreement, and pursuant to Section 6 of this Agreement. The Management Fee shall be calculated at

The Management Fee shall be an amount which is determined by calculating:

4 (i) of all Net Revenues, up to and  
+ including of the amount of Net Revenues projected for such year in the  
Projections; plus

4 (ii) of all Net Revenues  
but not exceeding of the amount of Net Revenues projected for  
such year in the Projections; plus

4 (iii) of all Net Revenues  
of the amount of Net Revenues projected for such year in the Projections.

The Net Revenues and Management Fee payments shall be calculated as the aggregate of the amounts derived as described in this Section 3.7A (i) (ii) and (iii) and shall be paid monthly as provided by Section 6.1A of this Agreement. The percentages due and the amounts paid in each fiscal month shall be calculated by dividing the annual amount in the Projections for that current fiscal year by 1/12th. The amount due to the Manager shall then be determined as provided in subsection (i), (ii) and (iii) of this Section 3.7A. If the aggregate amount due at the conclusion of any fiscal year varies from the sum of the amounts paid each month, there shall be an adjustment payment from the Nation to the Manager, or from the Manager to the Nation, as appropriate, no later than sixty days after the close of each fiscal year, with the aggregate Net Revenues and percentages, and the annual amount projected in the Projections for the year controlling the total annual amount of the Management Fee and the adjustment payment.

3.8 **Constitutional Amendment.** The Nation has enacted a constitutional amendment, attached as Exhibit E, establishing a tribal court with jurisdiction to hear disputes related to this Agreement, and to Gaming generally, prohibiting the impairment of contracts and requiring due notice of any proposed changes.

#### 4. **Business and Affairs in Connection with Gaming Enterprise.**

4.1 **Manager's Authority and Responsibility.** All business and affairs in connection with the day-to-day operation, management and maintenance of the Gaming Enterprise and the Gaming Facility, including the establishment of operating days and hours, shall be the responsibility of the Manager. The Manager is hereby granted all power and authority which is necessary or appropriate to act, through the General Manager, in order to fulfill its responsibilities under this Agreement. Manager agrees to employ good management practices, including competitive selection of goods and services, where appropriate.

4.1.1 **Selection of General Manager.** The selection of the General Manager shall be subject to approval by the Nation, by resolution of the Tribal Council, and such officer shall be removed at the request of the Nation, by resolution of the Tribal Council, with the consent of the Manager which consent shall not be unreasonably withheld.

4.2 **Duties of the Manager.** In managing, operating, maintaining and

repairing the Gaming Enterprise and the Gaming Facility the Manager's duties shall include, without limitation, the following:

**4.2.1 Management.** The Manager shall use reasonable measures for the orderly administration, management, and operation of the Gaming Enterprise and the Gaming Facility.

**4.2.2 Compliance.** The Manager shall comply in all material respects with all present and future statutes, regulations and ordinances of the Nation. The Nation shall take no action and adopt no statute or ordinance that prejudices or adversely affects the Manager's rights under this Agreement or that violates the Indian Civil Rights Act (25 U.S.C. §§ 1301-1303). Prior to any changes in the Nation's land use or zoning regulations or ordinances during the term of this Agreement, the Manager and the Nation shall jointly determine whether the Property shall be exempt from such changes.

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

**4.2.4 Contracts in Nation's Name and at Arm's Length.** Contracts for the operations of the Gaming Enterprise shall be entered into in the name of the Nation and signed by the General Manager pursuant to annual budgets approved by or with the written consent of the Nation. Contracts requiring the expenditure in any fiscal year in excess of \$10,000 shall require the approval of the Business Board. No contracts for the supply of goods or services to the Gaming Enterprise shall be entered into with parties affiliated with the Manager or its officers or directors unless the affiliation is disclosed to and approved by the Business Board, and the contract terms are no less favorable for the Gaming Enterprise than could be obtained from a non-affiliated contractor. Nothing in this Section shall preclude the application of Section 4.15 to any contract. Notwithstanding anything to the contrary contained herein, contracts for the supply of any goods or services paid for entirely by the Manager may be provided by parties affiliated with the Manager or its officers or directors. Payments on such contracts, which shall be entered into in Manager's name only, shall not constitute Operating Expenses and shall be the sole responsibility of the Manager.

**4.2.5. Financing.** The Manager shall assist the Nation in obtaining financing for the Enterprise. Any fees associated with this effort which might otherwise be paid by the lender to Manager shall be applied to reduce the principal amount.

**4.2.6 Operating Capital.** All necessary initial operating capital for the Enterprise shall be procured by the Nation through the proceeds of the Financing Agreements. AK

**4.3 Security and Surveillance.** Subject to the law enforcement authority of the Nation, the Manager shall provide for appropriate security and surveillance for the operation of the Gaming Facility. All aspects of Gaming Facility security and surveillance shall be the responsibility of the Manager. Any security officer designated by the Nation shall be bonded and insured, either individually or under blanket policies, in an amount commensurate with his or her enforcement duties and obligations. The cost of any charge for fire, ambulance or other emergency public safety services will be an Operating Expense. The Nation shall have sole responsibility for security and surveillance outside the Gaming Facility. The Nation shall have full 24 hour access to the entire Gaming facility, including the surveillance room, and to all surveillance tapes and records. All surveillance and security records of any kind, including tapes, computer records and written files, shall be maintained at the Gaming Facility. JWB

**4.4 Damage, Condemnation or Impossibility of the Gaming Enterprise.** If, during the term of this Agreement, the Gaming Facility is damaged or destroyed by fire, war, or other casualty, or by an Act of God, or is taken by condemnation or sold under the threat of condemnation, or if Gaming on the Property is prohibited as a result of a decision of a court of competent jurisdiction or by operation of any applicable legislation, the Manager shall have the following options:

**4.4.1 Recommencement of Operations.** The Manager shall have the option to continue its interest in this Agreement and to commence or recommence the operation of Gaming at the Gaming Facility if, at some point during the term of this Agreement, such commencement or recommencement shall be legally and commercially feasible in the sole judgment of the Manager.

**4.4.2 Repair or Replacement.** If the Gaming Facility is damaged, destroyed or condemned so that Gaming can no longer be conducted at the Gaming Facility, the insurance or condemnation proceeds shall, at the option of the Business Board, be utilized to restore or replace the Gaming Facility and to reopen the Gaming Enterprise, and the Manager may within 60 days after the casualty, choose to reconstruct the Gaming Facility to a condition at least comparable to that before the casualty occurred. If the Business Board elects to reconstruct the Gaming Facility and if the insurance proceeds or condemnation awards are insufficient to reconstruct the Gaming Facility to such condition, the Manager may, in its sole discretion, supply such additional funds as are necessary to reconstruct the Gaming Facility to such condition and such funds shall, with the prior consent of the Nation and the

4 B.I.A. or NIGC, as appropriate, constitute obligations of the Nation, the principal amount of the borrowing shall be repayable by the Nation from its share of the Net Revenues of the Gaming Enterprise upon such terms as may be agreed upon by the Nation and the Manager. The interest and other charges (if any) shall be payable from the Gross Revenues of the Gaming Enterprise as an Operating Expense. The total amount of recoupment for development costs, including the principal amount (exclusive of interest) of the indebtedness provided for herein together with all other indebtedness for Project Costs shall not exceed

If the insurance proceeds are not used to repair the Gaming Facility, the Nation shall have the sole right to adjust and settle any and all claims for such insurance proceeds or condemnation awards, and such proceeds or award shall be applied first to the amounts due under the Financing Agreements, (including principal, interest and premium, if any); second, any other Indebtedness; third, any undistributed Net Revenues pursuant to Section 6 of this Agreement, and fourth, any surplus shall be distributed to the Nation and/or to the Manager as their interests may appear. Proceeds of property hazard insurance remaining after all financing obligations are repaid shall belong to the Nation. Proceeds of business interruption insurance shall be included in the Gross Revenues of the Gaming Enterprise.

**4.4.3 Other Business Purposes.** The Manager shall have the option to use the Gaming Facility for other purposes included in the Gaming Enterprise and reasonably incidental to Class III Gaming, provided the Business Board has approved such purposes, which approval shall not be unreasonably withheld. For any purpose other than Gaming, the Manager and the Business Board shall obtain all approvals necessary under applicable law.

**4.4.4 Termination Of Gaming.** The Manager shall have the option at any time following the cessation of Gaming on the Property to notify the Nation in writing that it is terminating operations under this Agreement, in which case the Manager shall retain any rights to undistributed Net Revenues pursuant to Section 6 of this Agreement, and any rights pursuant to Section 16 of this Agreement. If Manager does not elect to terminate this Agreement, it may take whatever action may be necessary to reduce expenses during such termination of Gaming.

**4.4.5 Tolling Of the Agreement.** If, after a period of cessation of Gaming on the Property, the recommencement of Gaming is possible, and if the Manager has not terminated this Agreement under the provisions of Section 4.4.4, the period of such cessation shall not be deemed to have been part of the term of the Management Agreement and the date of expiration of the term of the Management Agreement shall be extended by the number of

days of such cessation period. Any reasonable payments made to any third party to eliminate rights acquired in the Property, the Gaming Facility or the Gaming Enterprise during the period of cessation shall constitute Operating Expenses of the Gaming Enterprise.

**4.5 Alcoholic Beverages and Tobacco Sales.** During the term of this Agreement alcoholic beverages may be served at retail at the Gaming Facility if permissible in accordance with Section 14 (b) of the Compact and applicable law as provided therein. The parties acknowledge that no enabling legislation of the Nation for the retail sale of alcoholic beverages is now in force, and that such legislation will be necessary in order to serve alcoholic beverages at the Gaming Facility. When such legislation is subsequently enacted, and all requisite approvals are obtained and all Legal Requirements are met, the Nation and the Manager may mutually agree to include service of such beverages within the Gaming Enterprise. If such legislation is enacted, it shall provide for the service of such beverages to the maximum extent permitted by the Compact.

Tobacco may be sold at retail at the Gaming Facility subject to and in accordance with the Nation's licensing requirements and other applicable law.

**4.6 Employees.**

**4.6.1 Manager's Responsibility.** Manager shall have, subject to the terms of this Agreement, the exclusive responsibility and authority to direct the selection, retention, training, control and discharge of all employees performing regular services for the Gaming Enterprise in connection with the maintenance, operation, and management of the Gaming Enterprise and the Gaming Facility and any activity upon the Property.

**4.6.2 Nation's Employees.** All employees of the Gaming Enterprise will be employees of the Nation.

**4.6.3 Off-Site Employees.** Manager shall also have the right to use employees of Manager, Manager's parent and subsidiary and affiliated companies not located at the Facilities to provide services to the Facilities ("Off-Site Employee") with the reasonable approval of the Tribal Council. All expenses, costs (including, but not limited to, salaries, benefits and severance pay), liabilities and claims which are related to employees working on-site and Off-Site Employees shall be paid by Manager and shall not comprise an Operating Expense.

**4.6.4 Nation's Inspector(s).** The Nation shall select the Nation Inspector(s) who shall be employed by the Nation and shall have the full access to inspect all aspects of the Gaming Enterprise, including the daily

operations of the Gaming Enterprise, and to verify daily Gross Revenues and all income of the Gaming Enterprise, at any time without notice, in a manner which does not hamper or impede the normal course of business. The General Manager or his or her designee may accompany the Nation's Inspector(s) upon any inspection. The salary and benefits, if any, of the Nation's Inspector(s) and other terms of employment shall be the sole responsibility of the Nation. The Nation's Inspector(s) shall report directly to the Nation.

**4.6.5 Indian Employment Preference and Training.** In order to maximize benefits of the Gaming Enterprise to the Nation, the Manager shall, during the term of this Agreement, give preference in recruiting, training and employment to qualified members of the Nation and their spouses and children in all job categories of the Gaming Enterprise, including management positions. Thereafter, preference shall be given to qualified, enrolled members of other federally recognized Indian tribes. The Manager shall provide training programs for Nation members and their spouses and children. Such training programs shall be available to assist Nation members in obtaining necessary skills and qualifications relating to all job categories.

The Manager shall use its best efforts to recruit and train Nation members, spouses and children, including without limitation: providing job fairs for members of the Nation and clearly specifying in all job advertisements the preference for Nation members.

**4.6.6 Removal of Employees.** The General Manager will act in accordance with the Enterprise Employee Policies with respect to the discharge, demotion or discipline of any Enterprise employee. The Nation shall have the right to remove the Nation's Inspector(s), subject to any contractual rights of such persons. Before any such removal, the Manager or the Nation, as the case may be, shall notify the Nation and the Manager.

**4.7 Marketing and Advertising.** The Manager shall have responsibility, in consultation with the Nation, to advertise and promote the Gaming Enterprise. Manager may participate in sales and promotional campaigns and activities involving Promotional Allowances. Manager, in marketing and advertising the Gaming Facility, shall, pursuant to Sections 4.2.4 and 4.6.3, have the right to use marketing, transportation, advertising and other employees and services of Manager, its partners, parent and affiliated companies not located at the Gaming Facility.

**4.8 Pre-Opening.** Six ( 6) months prior to the scheduled Opening Date, Manager shall commence implementation of a pre-opening program which shall include all activities necessary to financially and operationally prepare the Gaming

Facility for opening. To implement the pre-opening program, Manager shall prepare a comprehensive pre-opening budget which shall be submitted to the Business Board for its approval sixty (60) days after the Effective Date ("Pre-Opening Budget"). All costs and expenses of the pre-opening program shall be paid from a special bank account(s) opened by Manager in the name of the Nation upon which only Business Board's designees shall be authorized to draw ("Pre-Opening Bank Account(s)"). After all pre-opening expenses have been paid, the balance in the Pre-Opening Bank Account(s) shall be transferred to the Depository Account and the Pre-Opening Bank Account(s) closed.

**4.9 Operating Budgets.** Manager shall, prior to the scheduled Commencement Date, submit to the Tribal Council, for its approval, a detailed proposed budget, including compensation for all key employees and projected contracts with third party vendors and consultants, for the remainder of the current fiscal year ("Budget"). Thereafter, Manager shall, not less than sixty (60) days prior to the commencement of each full or partial fiscal year, submit to the Tribal Council, for its approval, a proposed Budget for the ensuing full or partial fiscal year, as the case may be.

The Council's approval of the Budget shall not be unreasonably withheld or delayed. Manager shall meet with the Tribal Council to discuss the proposed Budget and the Council's approval shall be deemed given unless a specific written objection thereto is delivered to Manager within thirty (30) days after Manager and the Tribal Council have met to discuss the proposed Budget. If the Tribal Council for any reason declines to meet with Manager to discuss a proposed Budget, it shall be deemed to have given its consent unless a specific written objection is delivered by it to Manager within fifteen (15) days after the date the proposed Budget is submitted to the Tribal Council. The Tribal Council shall review the Budget on a line-by-line basis. To be effective, any notice which disapproves a proposed Budget must contain specific objections in reasonable detail to individual line items.

If the initial proposed Budget contains disputed budget item(s), the Tribal Council and Manager agree to cooperate with each other in good faith to resolve the disputed or objectionable proposed item(s). In the event the Tribal Council and Manager are not able to reach mutual agreement concerning any disputed or objectionable item(s) within a period of fifteen (15) days after the date the Tribal Council provides written notice of its objection to Manager, either party shall be entitled to submit the dispute to arbitration in accordance with Section 16 of this Agreement. If the Tribal Council and Manager are unable to resolve the disputed or objectionable item(s) prior to the commencement of the applicable fiscal year, the undisputed portions of the proposed Budget shall be deemed to be adopted and approved and the corresponding line item(s) contained in the Budget for the preceding fiscal year shall be adjusted as set forth herein and shall be substituted in lieu of the disputed item(s) in the proposed Budget. Those line items which are in

dispute shall be determined by increasing the preceding fiscal year's actual expense for the corresponding line items by an amount determined by Manager which does not exceed the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, U.S. City Average, all items (1982-1984=100) for the fiscal year prior to the fiscal year with respect to which the adjustment to the line item(s) is being calculated or any successor or replacement index thereto. The resulting Budget obtained in accordance with the preceding sentence shall be deemed to be the Budget in effect until such time as Manager and the Tribal Council have resolved the items objected to by the Tribal Council.

Manager may, after notice to the Tribal Council, revise the Budget from time-to-time, as necessary, to reflect any unpredicted significant changes, variables or events or to include significant, additional, unanticipated items of expense. Manager may, after notice to the Tribal Council reallocate part or all of the amount budgeted with respect to any line item to another line item and to make such other modifications to the Budget as Manager deems necessary, provided that: (i) the individual or cumulative modifications of the Budget for any profit center shall not exceed five percent (5%) of the approved Budget for that profit center, and (ii) do not otherwise conflict with the terms of this Agreement. Budget adjustments which exceed 5% shall require the approval of the Business Board. Budget adjustments which otherwise vary from the terms of this Agreement shall, upon the request of the Nation's Representative, require the written approval of the Tribal Council. In addition, in the event actual Gross Revenues for any fiscal period are greater than those provided for in the Budget, the amounts approved in the Budget for guest services, food and beverage, telephone, utilities, marketing Promotional Allowances and the repair and maintenance of the Gaming Facility for any fiscal month shall be automatically deemed to be increased to an amount that bears the same relationship (ratio) to the amounts budgeted for such items as actual Gross Revenue for such fiscal month bears to the projected Gross Revenue for such fiscal month. The Nation acknowledges that the Budget is intended only to be a reasonable estimate of the Gaming Enterprise revenue and expenses for the ensuing fiscal year. Manager shall not be deemed to have made any guarantee, warranty or representation whatsoever in connection with the Budget.

**4.10 Capital Budgets.** Manager shall, not less than forty-five (45) days prior to the commencement of each fiscal year, submit to the Tribal Council a recommended "Capital Budget" for the ensuing full or partial fiscal year, as the case may be, for furnishings, equipment, and ordinary capital replacement items ("Capital Replacements") as shall be required to operate the Gaming Enterprise in accordance with sound business practices. The Tribal Council and Manager shall meet to discuss the proposed Capital Budget and the Tribal Council shall be required to make specific written objections to a proposed Capital Budget in the same manner and within the same time periods specified in Section 4.9 with respect to a Budget.

The Tribal Council shall not unreasonably withhold or delay its consent. Unless the Tribal Council and Manager otherwise agree, Manager shall be responsible for the design and installation of Capital Replacements, subject to the Tribal Council's approval and right to inspect.

**4.11 Capital Replacements.** The Nation shall effect and expend such amounts for any Capital Replacements as shall be required, in the course of the operation of the Gaming Enterprise, to maintain the Gaming Enterprise in compliance with any Legal Requirements and to comply with the Business Board's recommended programs for renovation, modernization and improvement intended to keep the Gaming Enterprise competitive in its market, maintain first class standards for the Enterprise, or to correct any condition of an emergency nature, including without limitation, maintenance, replacements or repairs which are required to be effected by the Nation, which require immediate action to preserve and protect the Gaming Facility, assure its continued operation, and/or protect the comfort, health, safety and/or welfare of the Gaming Facility's guests or employees. Manager is authorized, upon consultation with the Tribal Council, to take all steps and to make all expenditures from the Disbursement Account, described at Section 4.24, or Reserve Fund, described at Section 4.14 (in the case of expenditures for Capital Replacements), as it deems necessary to repair and correct any such condition, regardless whether such provisions have been made in the Budget for any such expenditures, and the cost thereof may be advanced by Manager and reimbursed from future revenues. Design and installation of Capital Replacements shall be effected in a time period and subject to such conditions as the Business Board may establish to minimize interference with or disruption of ongoing operations.

**4.12 Replacement Reserve Fund.** Manager shall establish an account (the "Replacement Reserve Fund" or the "Reserve Fund") on the books of account of the Gaming Enterprise, and the contributions by or on behalf of the Nation as required by Section 4.13 shall be placed into an account established in the Nation's name at a bank designated by the Business Board. These contributions shall not be deemed to be Operating Expenses. Deposits by the Nation shall be made as capital expenditures and shall not reduce Net Revenues. Deposits made on behalf of Manager shall reduce the amounts otherwise payable pursuant to Section 6.1A. These payments shall be made pursuant to Section 4.13 and to the priorities described at Section 6.4 of this Agreement. The parties shall make deposits to the Reserve Fund in amounts  
4 which are allocated from the Nation and from the Manager up to a  
4 combined total of from both parties. All amounts in the Reserve Fund shall be invested in interest bearing investments to the extent that availability of funds, when required, is not thereby impaired.

**4.13 Periodic Contributions to Reserve Fund.** There shall be paid into the Reserve Fund each Fiscal Month an amount equal to one twelfth of the amount

required as provided by a schedule determined by the Business Board. The cash amounts required to be so deposited shall be calculated and deposited into the Reserve Fund, in arrears, no later than the twenty-first (21st) day of the Fiscal Month immediately following the Fiscal Month with respect to which an accrual is made. In addition, all proceeds from the sale of capital items no longer needed for the operation of the Gaming Enterprise, and the proceeds of any insurance received in reimbursement for any items previously paid for from the Reserve Fund, shall be deposited into the Reserve Fund upon receipt.

**4.14 Use and Allocation of Reserve Fund.** Any expenditures which have been approved by the Nation in a Budget may be paid from the Reserve Fund without further additional approval from the Nation. Any amounts remaining in the Reserve Fund at the close of any Fiscal Year shall be carried forward and retained in the Reserve Fund until fully used. If amounts in the Reserve Fund at the end of any Fiscal Year plus the anticipated contributions to the Reserve Fund for the next ensuing Fiscal Year are not sufficient to pay for replacements authorized by the Annual Plan for such ensuing Fiscal Year, then additional funds, in the amount of the projected deficiency, may be advanced by the Manager and reimbursed by the Nation from future revenues in accordance with Section 6.4.

**4.15 Contracting.** In entering into contracts for the supply of goods and services for the Gaming Enterprise, the Manager shall give preference to qualified members of the Nation, their spouses and children, and qualified business entities certified by the Nation to be controlled by members of the Nation.

"Qualified" shall mean a member of the Nation, a member's spouse or children, or a business entity certified by the Nation to be controlled by members of the Nation, who or which is able to provide services at competitive prices, has demonstrated skills and abilities to perform the tasks to be undertaken in an acceptable manner, in the Manager's opinion, and can meet the reasonable bonding requirements of the Manager. The Manager shall provide written notice to the Nation in advance of all such contracting, subcontracting and construction opportunities in excess of ' 64

**4.16 Determination of Qualifications and Compensation.** Subject to Sections 4.3, 4.18 and 4.19, Manager shall have the sole responsibility for determining whether a prospective employee is qualified and the appropriate level of compensation to be paid thereto.

**4.17 Litigation.** If the Nation, the Manager, the Business Board or any employee of the Nation or Manager at the Gaming Facility or of the Gaming Enterprise is sued by any person not a party to this Agreement, or is alleged by any person not a party to this Agreement, to have engaged in unlawful or discriminatory acts in connection with the operation of the Gaming Enterprise, the

Nation or the Manager, as appropriate, shall defend such action. Any cost of such litigation shall constitute an Operating Expense, or, if incurred prior to the Commencement Date, shall be a Start-up Expense. Nothing in this Section shall be construed to waive or limit the Nation's sovereign immunity.

**4.18 Employee Background Investigations.** The Nation shall be responsible for conducting a background investigation in compliance with all Legal Requirements, to the extent applicable, on each applicant for employment as soon as reasonably practicable. No individual whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest, the effective regulation of Gaming, or to the gaming licenses of the Manager or any of its affiliates, or create or enhance the dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of Gaming, shall be employed by the Manager or the Nation. The background investigation procedures shall be formulated in consultation with the Manager and shall satisfy all regulatory requirements independently applicable to the Manager. Any cost associated with obtaining such background investigations shall constitute an Operating Expense, provided, however, the costs of background investigations relating to shareholders, officers, directors or key employees of the Manager or of the Tribal Council shall not constitute an Operating Expense. The Manager and the Nation shall provide all information required by the NIGC with respect to background investigations as required by the IGRA.

**4.19 Enterprise Personnel Policies.** The Manager has prepared the Enterprise Personnel Policies, which includes a job classification system with salary levels and scales. The Enterprise Personnel Policies have been approved by the Tribal Council. The Enterprise Personnel Policies include a grievance procedure which seeks to establish fair and uniform standards for the employees of the Nation engaged in the Enterprise. Any revisions to the Enterprise Personnel Policies shall not be effective unless they are approved in the same manner as was the original Enterprise Personnel Policies. All such actions shall comply with applicable law of the Nation.

**4.20 No Manager Wages or Salaries.** Except for work performed for the benefit of the Gaming Facility as provided in Section 4.6.3, with respect to Manager's Off-Site Employees, neither the Manager nor any of its officers, directors or shareholders or any employees, shall be compensated by wages from or contract payments by the Gaming Enterprise for their efforts or for any work which they perform under this Agreement, other than payments pursuant to the Financing Agreements, reimbursement pursuant to the Financing Agreements and the Management Fee paid to Manager under Section 6.4. Nothing in this subsection shall restrict the ability of an employee of the Gaming Enterprise to purchase or hold stock in the Manager, its parents, subsidiaries or affiliates where (i) such stock is publicly held, and (ii) such employee acquires, on a cumulative basis, less than ten

percent (10%) of the outstanding stock in the corporation.

**4.21 Internal Control Systems.** The Manager shall install systems for monitoring of all funds, which systems shall be submitted to the Business Board for approval in advance of implementation, which approval shall not be unreasonably withheld. The Nation shall retain the right to review all internal control systems and any changes instituted to the internal control systems of the Gaming Enterprise. The Nation shall have the right to retain an auditor to review the adequacy of the internal control systems prior to the Commencement Date. The cost of such review shall constitute a Start-up Expense. Any significant changes in such systems after commencement of operation of the Gaming Facility also shall be subject to review and approval by the Nation. The Nation and the Manager shall have the right and duty to maintain and police its internal control systems in order to prevent any loss of proceeds from the Gaming Enterprise. The Nation shall have the right to inspect and oversee the systems and to have the Nation's Inspector present to oversee the Hard Count and Soft Count room procedures at all times. The Manager shall install a closed circuit television system to be used for monitoring the Hard Count and Soft Count rooms and the cage area. The Nation's Inspector shall have full access to the closed circuit television system for use in monitoring the cash handling activities of the Gaming Enterprise.

**4.22 Bank Accounts.** The Business Board shall select a State or Federally chartered bank or banks located in the State of Connecticut for the deposit and maintenance of funds and shall establish such bank accounts as the Manager deems appropriate and necessary in the course of business and as consistent with this Agreement. All such bank accounts established shall comply with the terms of the Senior Secured Note Indenture with respect to the granting of a security interest therein. The Manager shall give notice of any such accounts to the Trustee and shall take such other action as the Trustee may require to evidence the establishment of the security interest in accordance with the terms of the Senior Secured Note Indenture.

**4.23 Daily Deposits to Depository Account.** Subject to Section 4.26 of this Agreement, the Manager shall establish for the benefit of the Nation in the Nation's name a Depository Account. The Manager shall collect all gross revenues and other proceeds connected with or arising from the operation of the Gaming Enterprise, the sale of all products, food and beverage, and all other activities of the Gaming Enterprise and deposit the related cash daily into the Depository Account at least once during each business day. All money received by the Gaming Enterprise on each day that it is open must be counted at the close of operations for that day or at least once during each 24-hour period. The parties hereto agree to obtain a bonded transportation service to effect the safe transportation of the daily receipts to the bank, if such service is available at a reasonable cost, which expense shall constitute an Operating Expense.

**4.24 Disbursement Account.** The Manager shall establish for the benefit of the Nation in the Nation's name a Disbursement Account. The Manager shall, consistent with and pursuant to the approved Budget, have responsibility and authority for making all required payments for Operating Expenses, debt service, management fees, and disbursements to the Nation from the Disbursement Account.

**4.25 No Cash Disbursements.** The Manager shall not make any cash disbursements from the bank accounts except for the payment of cash prizes and expenditures from the Cash Contingency Reserve Fund and Petty Cash Fund described in Section 4.26, any and all payments or disbursements by the Manager shall be made by check or wire transfer drawn against a bank account.

**4.26 Cash Contingency Reserve Fund.** Manager shall establish and maintain for the benefit of and in the name of the Nation a Cash Contingency Reserve Fund not to exceed \_\_\_\_\_ and a Petty Cash Fund not to exceed \_\_\_\_\_ of the Cash Contingency Reserve Fund. The amounts of these funds shall be established by the Business Board in conjunction with the establishment of the Budget, as an Operating Expense, or more often as approved by the Business Board. The Cash Contingency Reserve Fund shall be used to make transfers as necessary to the Disbursement Account and the cash prize reserve fund. The Petty Cash Fund shall be used for miscellaneous small expenditures of the Gaming Enterprise, and shall be maintained at the Gaming Facility.

**4.27 Transfers Between Accounts.** The Manager has the authority to transfer funds from the Depository Account to the Disbursement Account in order to pay Operating Expenses and to pay debt service pursuant to the Financing Agreements, Development and Construction Agreement and the fees payable to Manager pursuant to this Agreement.

**4.28 Insurance.** The Manager, on behalf of the Nation, shall maintain, or cause its agents to maintain, with responsible insurance carriers licensed to do business in the State of Connecticut, insurance reasonably satisfactory to the Nation covering the Gaming Facility and the operations of the Gaming Enterprise, naming the Nation and the Manager as insured parties, as follows:

**4.28.1** During the course of any new construction or remodeling, builder's risk insurance on an "all risk" basis (including collapse) on a non-reporting form for full replacement value covering the interest of the Nation in all work incorporated in the Gaming Facility, all materials and equipment on or about the Gaming Facility and any new construction or remodeling of the Gaming Facility. All materials and equipment in any off-site storage location intended for permanent use in the Gaming Facility, or incident to

the construction thereof, shall be insured on an "all risk" basis as soon as the same have been acquired by the Nation.

4.28.2 Commercial general liability insurance in an amount not less than One Hundred Million (\$100,000,000) Dollars per occurrence for all activities on, about or in connection with the Gaming Facility. The commercial general liability insurance shall include premises liability, contractor's protective liability on the operations of all subcontractors, completed operations and blanket contractual liability. The automobile liability insurance shall cover owned, non-owned and hired vehicles.

4.28.3 On or before the Completion Date, "all risk" insurance on the Gaming Facility against loss by fire, lightning, extended coverage perils, collapse, water damage, vandalism, malicious mischief and all other risks and contingencies, subject only to such exceptions as the Nation and the Manager may approve in an amount equal to the actual replacement costs thereof, without deduction for physical depreciation, with coverage for demolition and increased costs of construction, and providing coverage in an "agreed amount" or without provision for co-insurance.

4.28.4 Worker's Compensation and Employer's Liability Insurance subject to the statutory limits of the State of Connecticut in respect of any work or other operations on, about or in connection with the Gaming Facility.

4.28.5 Such other insurance with respect to the Gaming Facility and in such amounts as the Business Board from time-to-time may reasonably request against such other insurable hazards which at the time are commonly insured against in respect of property similar to the Gaming Facility.

4.28.6 The insurance policies required under Sections 4.28.1, 4.28.3 and 4.28.5 above shall have a standard noncontributory endorsement naming Manager as an additional loss payee. The insurance required under Section 4.28.2 above shall name the Manager as an additional insured. All insurance required hereunder shall contain a provision requiring at least 60 days' prior written notice to the Manager and the Nation before any cancellation, material changes or reduction shall be effective. Appropriate deductibles, approved by Manager, shall be included for all types of insurance required under this Section 4.28. The Manager may effect any insurance coverage required by this Agreement under blanket insurance policies, provided that the Nation shall be furnished satisfactory evidence that the protection afforded the Nation and the Manager under such blanket insurance policy is not less than that which would have been afforded under separate policies relating only to the Gaming Facility.

#### **4.29 Accounting and Books of Account.**

**4.29.1 Statements and Audits.** The Manager shall prepare and provide to the Nation on a monthly, quarterly, and annual basis, operating statements which after the full year of operation will include comparative statements of all revenues, and all other amounts collected and received, and all deductions and disbursements made therefrom in connection with the Gaming Enterprise. A nationally recognized independent certified public accounting firm with casino industry experience selected by the Nation, shall perform an annual audit of the books and records of the Gaming Enterprise and of all contracts for supplies, services or concessions reflecting Operating Expenses. The Business Board shall have full access to the audit process and all instructions to and reports from the auditor. The Nation, the B.I.A. and the NIGC shall also have the right to perform special audits of the Gaming Enterprise on any aspect of the Gaming Enterprise at any time without restriction. The costs incurred for such audits shall constitute an Operating Expense. Such audits shall be provided by the Nation to all applicable federal and state agencies, as required by law, and may be used by the Manager for reporting purposes under federal, foreign, and state securities and gaming laws, if required.

**4.29.2 Books of Account.** The Manager shall maintain full and accurate books of account at an office in the Gaming Facility and at such other location(s) as may be determined by the Manager, with the prior written consent of the Nation, which consent shall not be unreasonably withheld. The Nation and the Nation's Inspector shall have access to the daily operations of the Gaming Enterprise and shall have the unlimited right to inspect, examine, and copy all such books and supporting business records. Such rights may be exercised through an agent, employee, attorney, or independent accountant acting on behalf of the Nation. Nothing contained herein is intended to restrict Manager's right to utilize centralized accounting at an off-site location for the Gaming Enterprise, provided that the Nation shall have full 24-hour access to such accounting, and all related books and records at or from the gaming Facility.

**4.29.3 Accounting Standards.** Manager shall maintain the books and records reflecting the operations of the Gaming Enterprise in accordance with the accounting practices of Manager in conformity with GAAP, and shall adopt and follow fiscal accounting periods as set by the Business Board. The Gaming Facility level generated accounting records reflecting detailed day-to-day transactions of the Gaming Facility's operations shall be kept pursuant to Section 4.29.2 of this Agreement. The accounting systems and procedures shall, at a minimum (i) include an adequate system of internal accounting

controls; (ii) permit the preparation of financial statements in accordance with GAAP; (iii) be susceptible to audit; (iv) permit the calculation and payment of the Management Fee described in Section 3.7A; and (v) provide for the allocation of Operating Expenses or overhead expenses among the Nation, the tribal gaming operation, and any other user of shared facilities and services.

**4.29.4 Depreciation Schedules.** Depreciation schedules for all assets of the Enterprise shall be determined by the Business Board in accordance with GAAP, consistently applied, and with consideration of the Replacement Reserve Fund. The Facility shall be depreciated over a 40 year life.

5. **Liens.** The Nation specifically warrants and represents to the Manager that during the term of this Agreement the Nation shall not act in any way whatsoever, either directly or indirectly, to cause any party to become an encumbrancer or lienholder of the Property or the Gaming Facility, other than Manager or the lender(s) under the Financing Agreements, or to allow any party to obtain any interest in this Agreement without the prior written consent of the Manager, and, where applicable, consent from the United States. The Manager specifically warrants and represents to the Nation that during the term of this Agreement the Manager shall not act in any way, directly or indirectly, to cause any party to become an encumbrancer or lienholder of the Property or the Gaming Facility, or to obtain any interest in this Agreement without the prior written consent of the Nation, and, where applicable, the United States. The Nation and the Manager shall keep the Gaming Facility and Property free and clear of all mechanics' and other liens resulting from the construction of the Gaming Facility and all other liens which may attach to the Gaming Facility or the Property, which shall at all times remain the property of the United States in trust for the Nation. Manager shall have the right to contest any such liens on behalf of the Nation. If any such lien is claimed or filed, it shall be the duty of the Nation and the Manager to discharge the lien within 30 days after having been given written notice of such claim, either by payment to the claimant, by the posting of a bond and the payment into the court of the amount necessary to relieve and discharge the Property from such claim, or in any other manner which will result in the discharge of such claim.

Notwithstanding the foregoing, purchase money security interests in personal property may be granted with the prior written consent of the Nation and, when necessary, the B.I.A., United States Department of Interior or the NIGC as appropriate.

6. **Management Fee, Reimbursement and Disbursement.**  
**Financing Guarantee, Funding and Buy Out Option.**

**6.1A Authorization for Payment of Management Fee by Manager.** Subject to the provisions of Sections 6.4 and 4.12, on or before the twenty-fifth (25th) day of each fiscal month after the first full month of operation, Manager is authorized by the Nation to pay itself from the Bank Account(s) a fee calculated as provided by Section 3.7A of this Agreement.

**6.2 Disbursements.** As and when received by Manager, Revenues shall be deposited in the Bank Account(s) created pursuant to Section 4.22 of this Agreement. There shall, in turn, be disbursed by Manager, on a monthly basis, for and on behalf of the Nation, funds from the Bank Account(s) to pay to the extent available Operating Expenses and required deposits into the Reserve Fund.

Manager will reserve funds (in excess of the Minimum Balance), on an annualized basis, in the Bank Account each fiscal month for payment of any Operating Costs or any of the above items which Manager has a duty to pay that are not paid on a monthly basis (e.g., insurance premiums, etc.).

**6.3 Adjustment to Bank Account.** After the disbursements pursuant to Section 6, and establishment of any reserves for future disbursements as the Manager deems necessary, taking into account anticipated cash flow and Operating Costs at the Gaming Facility, any excess funds remaining in the Bank Account over the Minimum Balance (and such reserves) shall be disbursed monthly in accordance with Section 6.4.

**6.4 Payment of Fees and Nation Disbursement.** Within 25 days after the end of each calendar month of operations, the Manager shall calculate and report to the Nation the Gross Revenues, Operating Expenses, and Net Revenues (gaming and Net Revenues (other)) of the Gaming Enterprise for the previous month's operations and the year's operations to date. Such Net Revenues, less any amount reasonably needed to maintain a Cash Contingency Reserve Fund as previously agreed upon by the Business Board, shall be disbursed from the Bank Account(s) to the extent available to pay the scheduled items to the extent due and payable and earned in the following order of priority:

- |            |   |
|------------|---|
| First<br>4 | Minimum Priority Payment shall have first priority and shall be paid monthly in the amount of   |
|            | Minimum Priority Payments shall be charged against the Nation's distribution of Net Revenues and, where there is insufficient Net Revenues in a given month, Manager shall advance the funds necessary to compensate for the deficiency and shall be reimbursed by the Nation in the next |

succeeding month or months in accordance with the schedule of disbursements set forth in Article 6.4, as recoupment payments. Minimum Priority Payments shall be made for any month during which Gaming is conducted, including those months when Gaming is conducted for only a part of a month. No Minimum Priority Payment shall be owed for any month during which Gaming is suspended or terminated at the Gaming Facility for a full month pursuant to Section 4.4. The obligation shall cease to accrue upon termination of this Agreement for any reason.

- Second      Current principal, and any other payments including sinking funds or any required deposit to the Cash Maintenance Account and in the Interest and Excess Cash Flow Account (exclusive of interest, which shall be paid as an Operating Expense) due on the Senior Secured Notes (including pursuant to any required offer to purchase), the Senior Secured Note Indenture or the Subordinated Notes subject to the terms of the subordination provisions thereof, of the Authority.
- Third        Recoupment payments to Manager for funds advanced to the Nation for Minimum Priority Payments made for any prior period, and reimbursement of other amounts advanced by the Manager pursuant to Section 7.11. (These funds shall be charged, without interest, against the Nation's share of Net Revenues).
- Fourth       Replacement Reserve Payments by the Nation and the Manager.
- Fifth        Management Fee, after Replacement Reserve Payments, subject to the restrictions on the distributions of the Management Fee in the Senior Secured Note Indenture.

All remaining Net Revenues and cash from any prior period shall be distributed to the Nation subject to the restrictions on distributions to the Nation in the Senior Secured Note Indenture. Annually, the Manager shall distribute to the Nation any amount accumulated in the Interest and Excess Cash Flow Account required to be offered to the debtholders of the Authority and not accepted by the debtholders. The priority of payments from available funds which is described in this Section 6.4 does not control the calculation of the amount of each of these obligations. The calculation of the amounts of these obligations shall be as otherwise provided by this Agreement.

The Manager and the Nation agree that they will disburse all Net Revenues and pay all Operating Expenses in accordance with the terms of this

Section 6.4. Upon any payment or distribution of assets upon any liquidation, dissolution, winding up, reorganization, assignment for the benefit of creditors, marshalling of assets or any bankruptcy, insolvency or similar proceedings of the Gaming Enterprise, the holders of the Senior Secured Notes shall be entitled to receive payment in full with respect to all principal, premium, interest and other amounts owing in respect of the Senior Secured Notes before any payment of accrued Management Fees, recoupment payments, or any distribution to the Nation. The Manager and the Nation agree that this Section 6.4 and the order of priority of payments is for the benefit of the holders of the Senior Secured Notes and the Trustee under the Senior Secured Note Indenture and may not be altered in a manner adverse to the economic interests of the holders of the Senior secured Notes without the consent of the Trustee under the Senior Secured Note Indenture. The Manager agrees that if the Trustee under the Senior Secured Note Indenture forecloses upon the Leasehold Mortgage (as defined in the Senior Secured Note Indenture) that Manager shall have no interest in the leasehold estate thereunder or any rights or remedies against the Trustee or the Senior Secured Noteholders for the loss of its management interests hereunder, and Manager shall vacate and not remain on the premises, so long as gaming is not conducted on the Premises

4 6.5 Operative Dates. For purposes of this Section 6, the first year of operations shall begin on the Commencement Date and continue until the first day of the month following the first anniversary of the Commencement Date, and each subsequent year of operations shall be the 12-month period following the end of the previous year. Notwithstanding the foregoing, subject to Section 4.4.5, the term of this Agreement shall extend up to and through but not beyond . . . . after the Commencement Date.

6.6 Payment of Net Revenues. The Manager is authorized to transfer funds from the bank accounts of the Gaming Enterprise to the bank accounts of the Manager and the Nation in order to distribute Net Revenues and any other amounts due under this Section 6. The Net Revenues paid to the Nation pursuant to this Section 6 shall be payable to the Nation official or bank account specified by the Nation's Representative pursuant to Section 7.

4 6.7 Conditional Financing Guarantee. Manager agrees to guarantee to the Nation payment of . . . of the outstanding balance of the indebtedness of the Gaming Authority for the Project Costs. This obligation to guarantee shall be deemed to be met to the amount of any participation by Manager or any of its affiliates in the Financing Agreements and shall remain to the extent of any difference. If the Gaming Enterprise performs in a manner which enables the Nation to make payments substantially in accordance with the terms as set forth in the Senior Secured Note Indenture, this guarantee shall terminate upon termination of Manager's rights pursuant to this Agreement. The total principal  
4 amount guaranteed shall not exceed . . . . Project Costs as provided in

Section 6.8.

4  
4  
6.8 **Funding.** Manager agrees to use its best efforts to arrange, on commercially reasonable terms, financing for the Nation to pay Project Costs estimated at provided that the total amount of recoupment for development costs (exclusive of interest) including the aggregate principal amount of borrowings by the Nation for Project Costs arranged by the Manager and any advances under the Completion Guarantee (as defined in the Senior Secured Note Indenture) shall under no circumstances

4  
6.8.1A **Interest on Funds Advanced Pursuant to Completion Guarantee.**

The interest rate on any Note issued to evidence an obligation to repay funds advanced by Manager or any of its affiliates for any cost overruns pursuant to the Completion Guarantee shall be set and revised at intervals of six months, commencing with the date of execution of the Note and continuing thereafter at six month intervals until the Note is fully paid, at an annual rate

4  
6.8.2A **Early Debt Retirement.** Subject to the provisions of the Senior Secured Notes and the Senior Secured Note Indenture, the Subordinate Notes may be prepaid at any time. The interest on the Subordinate Notes shall accrue on the principal balance thereof outstanding from time to time, and shall cease to accrue upon payment in full of the principal balance of the Subordinated Notes.

4  
6.9 **Gaming Authority Start-Up Costs.** The start up costs for the Gaming Authority shall not exceed

4  
6.10A **Nation's Buy Out Option.** The Nation shall have the right to purchase all of the rights of the Manager pursuant to this Agreement on agreed upon commercially reasonable terms. This right may only be exercised following the first full month after the Commencement Date (the "Option Date").

In order to effectively exercise this option, the Nation shall:

- (i) give notice of its intent to exercise this option not more than 90 but not less than 30 days prior to the Option Date, the parties shall then enter into discussions to determine the option price and other commercially reasonable terms, and

(ii) fully pay and satisfy all of the indebtedness evidenced by the Senior Secured Notes and the Subordinated Notes and the Financing Agreements executed in connection therewith, including principal, premium, if any, accrued interest, fees and other charges due pursuant to any of such Financing Agreements, on or before the Option Date, and

(iii) tender to the Manager a full release, in form and substance reasonably satisfactory to Manager, of all of Manager's obligations pursuant to this Agreement, and all claims, whether asserted or unasserted, liquidated or contingent, which the Nation or any of its members, governmental agencies or affiliates may have or be entitled to assert against Manager or any of its officers, agents, employees, members or affiliates, arising out of events occurring on or before the Option Date, and

(iv) pay all amounts due to Manager pursuant to this Agreement, and perform all of the Nation's obligations under this Agreement, arising or accruing on or before the Option Date.

If the Nation fails to satisfy any of the above conditions on or before the dates specified above, then this option and any attempted exercise thereof shall be null and void and of no further force or effect, and the remainder of this Agreement shall continue in effect, according to its terms.

## **7. General Provisions.**

**7.1 Notice.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given to the applicable party (i) on the date of personal delivery or delivery by telecopier, (ii) on the business day immediately following transmittal to a major overnight commercial courier or (iii) five (5) days after deposit in the United States mail, postage prepaid, in any case addressed to the address or telecopy number of the applicable party set forth below, or such other address or number as such party may hereafter specify by notice to the other. The parties also designate the following persons as agents for receipt of service of process:

If to the Nation:	Ralph Sturges, Chief and Carlisle Fowler, Business Board Member and Roland Harris Business Board Member Mohegan Tribe of Indians of Connecticut 27 Church Lane Uncasville, CT 06382
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Telecopy: (203) 848-0545

with a copy to: Lewis B. Rome  
Rome, McGuigan, Hoberman,  
Sabanosh & Klebanoff, P.C.  
One State Street  
Hartford, Connecticut 06103-3101  
Telecopy: (203) 724-3921

If to Manager: Len Wolman  
Trading Cove Associates  
914 Hartford Turnpike  
P.O. Box 60  
Waterford, CT 06385  
Telecopy: (203) 437-7752

with a copy to: James E. Townsend  
Dorsey & Whitney  
220 South 6th Street  
Minneapolis, Minnesota 55402  
Telecopy: (612) 340-7800

or to such other different address(es) as the Manager or the Nation may specify in writing using the notice procedure called for in this Section 7.

**7.2 Authorization.** The Nation and Manager represent and warrant to each other that each has full power and authority to execute this Agreement and to be bound by and perform the terms hereof. Each party shall furnish evidence of such authority to the other, which shall be attached as Exhibits to this Agreement.

**7.3 Relationship.** Manager and the Nation shall not be construed as joint venturers or partners of each other by reason of this Agreement and neither shall have the power to bind or obligate the other except as set forth in this Agreement.

**7.4 Manager's Contractual Authority.** Subject to Section 4.2.4, Manager is authorized to make, enter into and perform in the name of and for the account of the Nation any contracts in furtherance of its obligations under this Agreement, including, without limitation, promotional or cross marketing agreements with any third party which are intended to enhance Gaming revenues.

**7.5 Further Actions.** The Nation and Manager agree to execute all contracts, agreements and documents and to take all actions necessary to comply with the provisions of this Agreement and the intent hereof. The parties further agree that:

**7.5.1 Fire and Safety.** The Gaming Facility shall be constructed and maintained in substantial compliance with such fire and safety statutes, Connecticut Building Code and related regulations which would be applicable if the Gaming Facility were located outside of the jurisdiction of the Nation although those requirements would not otherwise apply within that jurisdiction. To the extent that the Nation adopts fire, safety, or building code requirements which are more stringent than those otherwise applicable pursuant to the Compact, the Gaming Facility shall comply with such law. Nothing in this Section shall grant any jurisdiction (including but not limited to jurisdiction regarding zoning or land use) to the State of Connecticut or any political subdivision thereof over the Property or the Gaming Facility. Fire protection services for the Gaming Facility will be provided by the Nation, or third parties pursuant to agreement with the Nation.

**7.5.2 Taxes.** If any government attempts to impose any possessory interest tax upon any party to this Agreement or upon the Gaming Enterprise, the Gaming Facility or the Property, the Business Board, in the name of the appropriate party or parties in interest, may, upon unanimous vote, resist such attempt through legal action. The costs of such action and the compensation of legal counsel shall be an Operating Expense of the Gaming Enterprise. Any such tax or required payment shall constitute an Operating Expense of the Gaming Enterprise. This Section shall in no manner be construed to imply that any party to this Agreement or the Gaming Enterprise is liable for any such tax. This Section 7.5.2 shall not be construed to apply to federal or state income taxes which may be imposed upon Manager's share of the Net Revenues.

**7.5.3 Nation Taxes.** The Nation agrees that neither it nor any agent, agency, affiliate or representative of the Nation will impose any taxes, fees, assessments, or other charges of any nature whatsoever on payments of any debt service to Manager or to any lender furnishing financing for the Gaming Facility or for the Gaming Enterprise, or on the Gaming Enterprise, the Gaming Facility, the revenues therefrom or on the Management Fee as described in Section 6.4 of this Agreement; provided, however, the Nation may assess license fees reflecting reasonable regulatory costs incurred by the Nation. The Nation further agrees that neither it nor any agent, agency, affiliate or representative will impose any taxes, fees, assessments or other charges of any nature whatsoever on the salaries or benefits, or dividends paid to, any of the Manager's partners, stockholders, officers, directors, or employees or affiliates, or any of the employees of the Gaming Enterprise. If any such tax, fee, assessment or other charge is in fact levied, imposed, or collected, the Nation agrees that it shall reimburse Manager or the affected partners, stockholders, officers, directors, employees or affiliates for the full

value, and dollar for dollar of such tax, fee, assessment or other charge. Except as otherwise provided herein, if any taxes, fees or assessments are levied by the Nation, such taxes and assessments shall constitute Operating Expenses of the Gaming Enterprises.

**7.5.4 Governing Law.** The rights and obligations of the parties and the interpretation and performance of this Agreement shall be governed by the law of the State of Connecticut, excluding its conflict of law rules. All gaming covered by the Agreement will be conducted in accordance with IGRA and the governing ordinances of the Nation.

**7.5.5 National Environmental Policy Act.** The Nation shall supply the NIGC with all information necessary for the NIGC to comply with any regulations of the Commission issued pursuant to the National Environmental Policy Act ("NEPA"). The cost of any such compliance shall constitute an operating expense.

**7.6 Defense.** Except for disputes between the Nation and Manager, Manager shall bring, defend, or settle any claim or legal action brought against Manager or the Nation, individually, jointly or severally in connection with the operation of the Gaming Enterprise. Subject to the approval of the Business Board, Manager shall retain and supervise legal counsel, accountants and such other professionals, consultants and specialists as Manager deems appropriate to defend and/or settle any such claim or cause of action. Any action which poses a substantial risk to the normal operation of the Gaming Facility shall be supervised by the Business Board with notice to and appropriate consultation with the Tribal Council. All liabilities, costs, and expenses, including attorneys' fees and disbursements, incurred in defense or settlement of any such claim or legal action which are not covered by insurance shall be an Operating Expense. Nothing contained in this Section 7.6 is a grant to the Manager of the right to waive tribal immunity.

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

**7.8 Captions.** The captions for each Section are intended for convenience

only.

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

**7.10 Interest.** Any amount payable to Manager or the Nation by the other, including without limitation, unpaid interest, which has not been paid when due shall accrue interest at same rate as the Subordinated Notes, but in no event shall such interest exceed the cost of such funds. Any funds advanced by the Manager for the minimum monthly guaranteed payment will be repaid from the Nation's share of future net revenues without interest.

**7.11 Reimbursement.** With the approval of the Tribal Council, Manager may, according to the terms of this Agreement or at its option, advance funds or contribute property, on behalf of the Nation, to satisfy obligations of the Nation in connection with the Gaming Facility and this Agreement. Manager shall keep appropriate records to document all reimbursable expenses paid by Manager, which records shall be made available for inspection by the Nation or its agents upon request. The Nation agrees to reimburse Manager with interest from future Net Revenues for money paid or property contributed by Manager to satisfy obligations of the Nation in connection with the Gaming Enterprise and this Agreement. Interest shall be calculated at the rate and in the manner set forth in Section 7.10 from the date the Nation was obligated to remit the funds or contribute the property for the satisfaction of such obligation to the date reimbursement is made; all such interest shall constitute an operating expense pursuant to GAAP. The Manager's sole source of such Reimbursement shall be from undistributed and future Revenues.

**7.12 Travel and Out-of-Pocket Expenses.** Subject to the Budget, all travel and out-of-pocket expenses of Gaming Enterprise employees reasonably incurred in the performance of their duties shall be an Operating Expense.

**7.13 Third Party Beneficiary.** Except with respect to the rights of the Trustee and the holders of the Senior Secured Notes under Sections 4.2 and 6.4, this Agreement is exclusively for the benefit of the parties hereto and it may not be enforced by any party other than the parties to this Agreement and notwithstanding the provisions of Section 7.11, shall not give rise to liability to any third party other than the authorized successors and assigns of the parties hereto.

**7.14 Brokerage.** Manager and the Nation each hereby agrees to indemnify and hold the other harmless from and against any and all claims, loss, liability, damage or expenses (including reasonable attorneys' fees) suffered or incurred by the other party as a result of a claim brought by a person or entity engaged or claiming to be engaged as a finder, broker or agent by the indemnifying party.

**7.15 Survival of Covenants.** With the exception of the obligation to make the Minimum Priority Payment described at Section 6.4, any covenant, term or provision of this Agreement which, in order to be effective, must survive the termination of this Agreement, shall survive any such termination.

**7.16 Estoppel Certificate.** Manager and the Nation agree to furnish to the other party, from time to time upon request, an estoppel certificate in such reasonable form as the requesting party may request stating whether there have been any defaults under this Agreement known to the party furnishing the estoppel certificate and such other information relating to the Gaming Enterprise as may be reasonably requested.

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

**7.18 Preparation of Agreement.** This Agreement shall not be construed more strongly against either party regardless of who is responsible for its preparation.

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

**7.20 Non-Assignability.** This Agreement shall not be assigned by either party, nor shall subcontracts be entered into between Manager and a third party wherein the third party will have any responsibility for gaming or access to the proceeds of the gaming operation, without the prior written consent of the other party, which consent shall not be unreasonably withheld. No assignment involving responsibility for Gaming or Gaming Operations shall be valid until approved by the Chairman of the NIGC. If an assignment is so approved, this Agreement shall inure to the benefit of and be binding on the assignee.

**7.21 Confidential Information.** Each party agrees that any information received concerning the other party during the performance of this Agreement, regarding a parties' organization, financial matters, marketing plans, or other

information of a proprietary nature, will be treated by both parties in full confidence and except in response to legal process or appropriate and necessary governmental inquiry will not be revealed to any other persons, firms or organizations. This provision shall survive the termination of this Agreement for a period of two (2) years.

**7.22 Employment Solicitation Restriction Upon Termination.** The parties recognize that the Manager will be offering employment at the Gaming Enterprise to present employees of Manager and its affiliates who now have various accrued benefits including seniority and retirement. In order to enable the Manager to provide appropriate incentive to these persons, it will be necessary to assure them that they will be able to be reinstated. Upon the expiration of the gaming term, the Manager or an entity affiliated with Manager may offer other employment to the General Manager and the department heads of the Gaming Enterprise. For purposes of implementing the preceding sentence, the Manager shall from time to time designate, subject to the concurrence of the Nation, who shall be regarded as department heads for such purposes. Manager shall indemnify the Nation and hold it harmless from liabilities, claims, losses and expenses arising from any action or claim brought against the Nation for its failure to employ any such person offered suitable employment by Manager or an entity affiliated with Manager.

**7.23 Patron Dispute Resolution.** Manager shall attempt to resolve all Patron disputes pursuant to the Policies and Procedures set forth in Exhibit F, subject to the Nation's Gaming Ordinance and the Compact.

**7.24 Modification.** Any change to or modification of this Agreement must be in writing signed by both parties hereto and shall be effective only upon approval by the Chairman of the NIGC, the date of signature of the parties notwithstanding.

**7.25 Compliance with Final Environmental Document.** The Business Board shall take all action necessary and appropriate to ensure that the scope of the Gaming Enterprise is consistent with the project as described in the final environmental document. The project shall not exceed the scope described in the final environmental document without additional review and approval, if necessary, by the NIGC, BLA or other appropriate agency of the United States.

## **8. Warranties.**

**8.1 Preservation of Agreement.** The Manager and the Nation each warrant and represent that they shall not act in any way whatsoever, directly or indirectly, to cause this Agreement to be amended, modified, canceled, or terminated, except pursuant to Section 7.24. The Manager and the Nation warrant and represent that they shall take all actions necessary to ensure that this Agreement

shall remain in full force and effect at all times.

**8.2 Non-Interference in Nation Affairs.** The Manager agrees not to unduly interfere in or attempt to influence the internal affairs or government decisions of Nation government by offering cash incentives, by making written or oral threats to the personal or financial status of any person, or by any other action, except for actions in the normal course of business of the Manager that only affect the activities of the Gaming Enterprise. For the purposes of this Section 8.2, if any such undue interference in Nation affairs is alleged by the Nation the provisions of Section 9.3 shall apply.

**8.3 Prohibition of Payments to Members of Nation Government.** Manager represents and warrants that no payments or gifts of services or other things of value have been or will be made to any member of the Nation government, any Nation official, any relative of a member of Nation government or Nation official, or any Nation government employee for the purpose of obtaining any special privilege, gain, advantage or consideration. The forgoing shall not prohibit seasonal gifts, birthday gifts, and gifts for other special occasions, provided that each such gift is for nominal value not to exceed \$100 (ONE HUNDRED) dollars, and the aggregate value of such gifts in any one calendar year shall not exceed \$500 (FIVE HUNDRED) dollars. Manager shall not offer any Promotional Allowances to any tribal member, notwithstanding the fact that such allowances might otherwise be made in the normal course of business.

**8.4 Prohibition of Hiring Members of Nation's Government.** No Member of the Nation's Government, official of the Nation, relative of a Member of the Nation's Government or of an official of the Nation or employee of the Nation's Government may be employed at the Gaming Enterprise without a written waiver of this Section 8.4 by the Nation, and where required by applicable law, the Area Director, Eastern Area Office, B.I.A. or the NIGC or other appropriate federal official.

**8.5 Prohibition of Financial Interest in Enterprises.** No member of the Nation government or relative of a member of the Nation government shall have a direct or indirect financial interest in the Gaming Enterprise greater than the interest of any other member of the Nation; provided, however, nothing in this subsection shall restrict the ability of a Nation member to purchase or hold stock in the Manager, its partners, parents, subsidiaries or affiliates where (i) such stock is publicly held, and (ii) the Nation member acquires less than (10%) ten percent of the outstanding stock in the corporation, provided that if a Nation member shall acquire more than (10%) ten percent such person shall comply with all applicable law, including, without limitation, the Compact.

**8.6 "Member of the Nation's Government"** as used in this Section 8 means any member of the Tribal Council, the Gaming Authority, members of the board of

directors of a tribal corporation with business responsibilities for gaming or any independent board or body created to oversee any aspect of Gaming and any Nation court official; the term "relative" means an individual residing in the same household who is related as a spouse, father, mother, brother, sister, son or daughter.

9. Grounds for Termination.

9.1 Voluntary Termination and Termination for Cause. This Agreement may be terminated pursuant to the provisions of Sections 4.4.4, 8.2, 9.2, 9.3, 9.4, 9.5, and 12.5.

9.2 Voluntary Termination. This Agreement may be terminated upon the mutual written consent and approval of the parties.

9.3 Termination for Cause. Either party may terminate this Agreement if the other party commits or allows to be committed any material breach of this Agreement. A material breach of this Agreement shall include, but not be limited to, a failure of either party to perform any material duty or obligation on its part for any thirty (30) consecutive days after notice. Neither party may terminate this Agreement on grounds of material breach unless it has provided written notice to the other party of its intention to declare a default and to terminate this Agreement and the defaulting party thereafter fails to cure or take steps to substantially cure the default within sixty (60) days following receipt of such notice. If during the period specified in the notice to terminate the party which has received the notice of breach is actively proceeding in good faith to cure the breach, the other party shall agree to extend the period for a reasonable time. During the period specified in the notice to terminate, either party may submit the matter to arbitration under the dispute resolution procedures of this Agreement. The period to cure the breach shall be tolled during the pendency of such arbitration proceeding. The discontinuance or correction of a material breach shall constitute a cure thereof.

The Nation may also terminate this Agreement where the Manager has had its license withdrawn because the Manager, or a director or officer of the Manager, has been convicted of a criminal felony or misdemeanor offense directly related to the performance of the Manager's duties hereunder; provided, however, the Nation may not terminate this Agreement based on a director or officer's conviction where the Manager terminates such individual within ten days after receiving notice of the conviction.

In the event of any termination for cause, regardless of fault, the parties shall retain all money previously paid to them pursuant to Section 6 of this Agreement; and the Nation shall retain title to all Gaming Enterprise and Gaming Facility fixtures, improvements, supplies, equipment, funds and accounts, subject to the

rights of Manager under any Financing Agreement and to the rights of the Manager to any accrued and unpaid Net Revenues due under Section 6 of this Agreement. Subject to any adjudicated offsets, the Manager shall continue to have the right to repayment of unpaid principal and interest and other amounts due under the Financing Agreements and any other agreements entered pursuant hereto.

Subject to Section 16, an election to pursue damages or to pursue specific performance of this Agreement or other equitable remedies while this Agreement remains in effect pursuant to the provisions of Section 9.6 or 9.7 shall not preclude the injured party from providing notice of termination pursuant to this Section 9.3. Neither shall termination preclude a suit for damages.

**9.4 Involuntary Termination Due to Changes in Legal Requirements.** It is the understanding and intention of the parties that the establishment and operation of the Gaming Enterprise conforms to and complies with all Legal Requirements. If during the term of this Agreement, the Gaming Enterprise, any material aspect of Gaming or any material aspect of the Compact is determined by the Congress of the United States, the Department of the Interior of the United States of America, the NIGC, or the final judgment of a court of competent jurisdiction to be unlawful under federal law, the obligations of the parties hereto shall cease, and this Agreement shall be of no further force and effect; provided that (i) the Manager shall have the rights in Section 4.4 of this Agreement; (ii) the Manager and the Nation shall retain all money previously paid to them pursuant to Section 6 of this Agreement; (iii) funds of the Gaming Enterprise in any account shall be paid and distributed as provided in Section 6 of this Agreement; (iv) any money lent by or guaranteed by the Manager or its affiliates to the Nation shall be repaid to the Manager to the extent provided in Section 16.2.1; and (v) the Nation shall retain its interest in the lease and title to all Gaming Enterprise furnishing, fixtures, supplies and equipment, subject to the rights of the Manager under the Financing Agreements and subject to any requirements of financing arrangements.

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

(i) Any Nation, State or Federal authority whose approval is required fails to approve this Agreement or otherwise objects to the performance by Manager of any obligation imposed on it under this Agreement.

(ii) Manager has been notified by any regulatory agency that the performance by it of any material obligation imposed by this Agreement will jeopardize the retention of any license, or approvals granted thereunder, held by Manager or any of its affiliates in any other jurisdiction, and the Nation refuses to allow the Manager to immediately rectify any such complaint.

(iii) Manager, after seven days prior notice to the Tribal Council, has reason to believe that the performance by it or the Nation of any material obligation imposed under this Agreement may reasonably be expected to result in the breach of any applicable Nation, State or Federal law.

**9.6 Consequences of Termination for Manager's Breach.** In the event of the termination of this Agreement by the Nation for cause under Section 9.3, the Manager shall not, prospectively from the date of termination, except as provided in Section 9.3, have the right to its Management Fee from the Gaming Enterprise, but such termination shall not affect the Manager's rights relating to reimbursement under this Agreement or any other agreements entered pursuant hereto. Manager shall indemnify and hold the Nation harmless against all liabilities of any nature whatsoever relating to the Gaming Enterprise, but only insofar as these liabilities result from acts within the control of the Manager or its agents. Any Net Revenues accruing through the date of termination shall be distributed in accordance with Section 6 of this Agreement.

**9.7 Consequences of Termination for Nation's Breach.** In the event of termination of this Agreement by the Manager for cause under Section 9.3, the Manager shall not be required to perform any further services under this Agreement and the Nation shall indemnify and hold the Manager harmless against all liabilities of any nature whatsoever relating to the Gaming Enterprise, but only insofar as these liabilities result from acts within the control of the Nation or its agents. Any Net Revenues accruing through the date of termination shall be distributed in accordance with Section 6 of this Agreement.

**10. Conclusion of the Management Term.** Upon the conclusion of the term of the Management Agreement, or the termination of this Agreement under other of its provisions, in addition to other rights under this Agreement, the Manager shall have the following rights:

**10.1 Transition.** If termination occurs at any time other than upon the conclusion of the Term, Manager shall be entitled to a reasonable period of not more than thirty (30) days (such time as may be necessary to bring the accounting period to the close of a calendar month) to transition management of the Gaming Enterprise to the Nation or its designee. Manager and the Nation shall cooperate to effect an orderly transition.

**10.2 Undistributed Net Revenues.** If the Gaming Enterprise has accrued Net Revenues which have not been distributed under Section 6 of this Agreement, such Net Revenues shall be distributed according to Section 6.4 of this Agreement.

**11. Consents and Approvals.**

**11.1 Nation.** Where approval or consent or other action of the Nation, or any agent or political subdivision of the Nation is required, such approval shall mean the written approval of the Tribal Council evidenced by a duly enacted resolution thereof, or, if not provided by resolution of the Tribal Council, the written approval of the Gaming Authority, the Business Board Representative or such other person or entity designated by resolution of the Tribal Council. Any such approval, consent or action shall not be unreasonably withheld or delayed.

**11.2 Manager.** Where approval or consent or other action of the Manager is required, such approval shall mean the written approval of the Manager's Representative. Any such approval, consent or other action shall not be unreasonably withheld or delayed.

**12. Disclosures.**

**12.1 Partners and Affiliates.** The Manager warrants that on the date of this Agreement a complete list of its partners and their shareholders, directors and officers is attached as Exhibit B.

**12.2 Warranties.** The Manager further warrants and represents as follows: (i) no person or entity has any beneficial ownership interest in the Manager other than as set forth herein; (ii) no officer, director or owner of (10%) ten percent or more of the stock of the Manager has been arrested, indicted for, convicted of, or pleaded nolo contendere to any felony or any gaming offense, or had any association with individuals or entities known to be connected with organized crime; and (iii) no person or entity listed in Section 12.1 of this Agreement, including any officers and directors of the Manager, has been arrested, indicted for, convicted of, or pleaded nolo contendere to any felony or any gaming offense, or had any association with individuals or entities known to be connected with organized crime.

**12.3 Criminal and Credit Investigation.** The Manager agrees that all of its partners, directors and officers involved in the Gaming Enterprise shall:

(i) consent to background investigations to be conducted by the Nation, the State of Connecticut, the Federal Bureau of Investigation (the "FBI") or any other law enforcement authority if requested by the Nation and to the extent required by the IGRA and the Compact,

(ii) be subject to licensing requirements in accordance with the law of the Nation,

(iii) consent to a background, criminal and credit investigation to be conducted by the NIGC or B.I.A.,

(iv) consent to a financial and credit investigation to be conducted by a credit reporting or investigation agency at the request of the Nation,

(v) cooperate fully with such investigations,

(vi) disclose any information requested by the Nation which would facilitate in the background and financial investigation, and

(vii) pay the reasonable cost and expenses of investigation for licensing of any person required by applicable law to hold licenses by the Gaming Authority, up to \_\_\_\_\_ per individual, for all partners, directors, officers, and ten percent shareholders, and up to \_\_\_\_\_ per domestic entity, 64 with an additional \_\_\_\_\_ for each foreign country in which the foreign entity does business. The Nation agrees that the foregoing are reasonable costs and will not seek or impose any licensing costs or fees in excess of these amounts for any individual license absent consent of the licensed party.

Any materially false or deceptive disclosures or failure to cooperate fully with such investigations by an employee of the Manager or an employee of the Nation shall result in the immediate dismissal of such employee. The results of any such investigation may be disclosed by the Nation to federal officials as required by law.

**12.4 Disclosure Amendments.** The Manager shall, within ten days of any proposed change in financial interest in the Manager, provide the Nation with all information required by 25 CFR 537.1 as to: (i) any of the partners of the Manager with the ten (10) largest interests in the partnership ; (ii) each person who is a director or who is one the ten (10) largest holders of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling when the entity is a corporation; provided however, that if Manager exercises due diligence pursuant to this Section 12.4, any reasonable or unavoidable delay in the delivery of such information shall not be or be deemed to be a material breach of this Agreement. The Nation shall submit the information required by 25 CFR §§ 533 and 537 to the NIGC. All of the warranties and agreements contained in this Section 12 shall apply to any person or entity who would be listed in this Section 12 as a result of such changes.

**12.5 Breach of Manager Warranties and Agreements.** The material breach of any warranty or agreement of the Manager contained in this Section 12 shall be grounds for immediate termination of this Agreement; provided that (a) if a breach of the warranty contained in clause (ii) of Section 12.2 is discovered, and such breach was not disclosed by any background check conducted by the FBI as part of the B.I.A.

or other federal approval of this Agreement, or was discovered by the FBI investigation but all other officers and directors of the Manager sign sworn affidavits that they had no knowledge of such breach, then the Manager shall have 30 days after notice from the Nation to terminate the interest of the offending person or entity and, if such termination takes place, this Agreement shall remain in full force and effect; and (b) if a breach relates to a failure to update changes in financial position or additional gaming related activities, then the Manager shall have 30 days after notice from the Nation to cure such default prior to termination.

13. **Recordation.** At the option of the Manager or the Nation, any security agreement related to the Financing Agreements may be recorded in any public records. Where such recordation is desired in the public records of the B.I.A., the Nation will accomplish such recordation upon the request of the Manager. The Manager shall promptly reimburse the Nation for all expenses, including attorney fees, incurred as a result of such request. No such recordation shall waive the Nation's sovereign immunity.

14. **Authority to Execute.** Each party warrants to the other that it has full authority to execute this Agreement.

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

16. **Dispute Resolution.**

16.1 **Nation's Consent to Suit.** Subject to Section 20 the Nation, and the Nation on behalf of the Gaming Authority, expressly waives sovereign immunity for the purpose of permitting or compelling arbitration as provided in this Section, and to be sued in any court of competent jurisdiction by the Manager for the purpose of compelling arbitration or enforcing any arbitration award or judgment arising out of this Agreement, the Financing Agreements, any Collateral Agreements other obligations between the parties, or of the Mohegan Nation Gaming Ordinance, or any rules, actions, or decisions of the Gaming Authority pursuant thereto, or the issuance, non-issuance, condition, suspension, denial or revocation of any license. Without in any way limiting the generality of the foregoing, the Nation expressly authorizes any governmental authorities who have the right and duty under applicable law to take any action authorized or ordered by any court, to take such action, including without limitation, entering the Property

and repossessing any furniture and equipment subject to a security interest or otherwise giving effect to any such judgment entered. In no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Nation other than the limited assets of the Nation specified in Section 16.2.1.

**16.1.1 Arbitration.** All disputes, controversies or claims arising out of or relating to this Management Agreement, or the Notice of Termination thereof, or of the Mohegan Nation Gaming Ordinance, or the Gaming Authority Ordinance or any rules, actions, or decisions of the Nation or the Gaming Authority pursuant thereto, or the issuance, non-issuance, condition, suspension, denial or revocation of any license required thereunder, shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association and the Federal Arbitration Act. The arbitrator(s) shall have no authority to award punitive damages. Unless the parties mutually agree otherwise, binding arbitration shall be the sole remedy as to all disputes arising out of this Agreement, except for disputes requiring injunctive or declaratory relief, which shall be pursued as provided in Sections 16.1 and 16.2.

**16.1.2 Choice of Law.** In determining any matter the Arbitrator(s) shall apply the terms of this Agreement, without adding to, modifying or changing the terms in any respect, and shall apply Connecticut law, except Connecticut choice of law rules, and applicable federal and tribal law.

**16.1.3 Place of Hearing.** All arbitration hearings shall be held at a place designated by the arbitrator(s) in New London County, Connecticut.

**16.1.4 Confidentiality.** The parties and the arbitrator(s) shall maintain strict confidentiality with respect to the arbitration.

**16.2 Limitation of Actions.** The Nation's waiver of immunity from suit is specifically limited to the following actions and judicial remedies:

**16.2.1 Damages.** The enforcement of an award of money damages by arbitration; provided that the arbitrator(s) and/or the court shall have no authority or jurisdiction to order execution against any assets or revenues of the Nation except (i) undistributed or future Net Revenues of the Gaming Enterprise; or (ii) if it has been specifically found by an arbitrator that, by exercise of regulatory authority pursuant to the Nation's Gaming Ordinance or otherwise, or any rules, actions, or decisions of the Gaming Authority pursuant thereto, or the issuance, non-issuance, condition, suspension, denial or revocation of any license, the Nation has prejudiced the Manager's rights under this Agreement or accompanying agreements, or has in any material way caused the lack of business success of the Gaming Enterprise, the

future Net Revenues of any other gaming operations conducted by the Nation. In no instance shall any enforcement of any kind whatsoever be allowed against any assets of the Nation other than the limited assets of the Nation specified in this Section 16.2.1.

**16.2.2 Consents and Approvals.** The enforcement of a determination by an arbitrator that the Nation's consent or approval has been unreasonably withheld contrary to the terms of this Agreement.

**16.2.3 Injunctive Relief and Specific Performance.** The enforcement of a determination by an arbitrator that prohibits the Nation from taking any action that would prevent the Manager from operating the Gaming Enterprise pursuant to the terms of this Agreement, or that requires the Nation to specifically perform any obligation under this Agreement (other than an obligation to pay money which is provided for in Section 16.2.1).

**16.2.4 Action to Compel Arbitration.** An action to compel arbitration pursuant to this Section 16.

**16.2.5 Action to Preserve the Status Quo During Disputes.** An action to preserve the status quo during disputes pursuant to Section 20.

**16.3 Business Board Arbitration.** The parties hereby agree to ensure that their respective representatives to the Business Board shall cooperate fully and shall try to reach agreement or compromise on all matters before the Business Board. In the event that the Business Board is unable to reach agreement or compromise on any matter that reasonably may be expected to have an adverse material effect on the Enterprise, that matter shall be submitted to arbitration as provided in this Section 16.3. Arbitration shall be before a single arbitrator with relevant expertise, selected jointly by the parties; if the parties are unable to agree on the selection of the arbitrator, the arbitrator shall be selected by the American Arbitration Association. The arbitrator hearing disputes arising out of the Business Board shall render a decision within forty-eight hours of the submission of the dispute, and shall apply the standard of a reasonable, prudent business person.

**17. Time is of the Essence.** Time is of the essence in the performance of this Agreement.

**18. Nation Assets.** Nothing in this Agreement shall obligate or authorize the payment or encumbrance of any funds or assets of the Nation other than the revenues and assets of the Gaming Enterprise (excluding the Gaming Facility and the Property on which it is located).

**19. Notice Provision.** The Nation will give the Manager notice of any alleged

violation of the Nation's Gaming Ordinance and thirty (30) days opportunity to cure before the Gaming Authority may take any action based on such alleged violation. At least (14) fourteen days before any final action upon any proposed amendments to the Mohegan Tribal constitution, or to the Gaming Authority Ordinance, or to the Nation's Gaming Ordinance, the Nation will give Manager written notice of the complete text of any such amendments.

**20. Performance During Disputes.** It is mutually agreed that during any kind of controversy, claim, disagreement or dispute, including a dispute as to the validity of this Agreement, the issuance, non-issuance, condition, suspension, denial or revocation of any license, or the Manager's ability to perform its duties and collect its Management fee, Manager shall remain in possession of the Gaming Facility as Manager; and the Nation and Manager shall continue their performance of the provisions of this Agreement and its exhibits. Manager shall be entitled to injunctive relief from a civil court or other competent authority to maintain possession in the event of a threatened eviction during any dispute, controversy, claim or disagreement arising out of this Agreement.

**21. Marks.** Prior to the Commencement Date and from time to time during the Term hereof, Manager agrees to erect and install, in accordance with applicable local codes and regulations, all signs Manager deems necessary in, on or about the Gaming Facility, including, but not limited to, signs bearing the Manager's and the Nation's Marks. The use of any such Marks shall require the prior approval of the Tribal Council. The costs of purchasing, leasing, transporting, constructing, maintaining and installing the required signs and systems shall be part of the start-up costs and Operating Expenses, as the case may be.

**21.1 Nation's Marks.** The Manager agrees to recognize the exclusive right of ownership of Nation to all Nation's service marks, trademarks, copyrights, trade names, patents or other similar rights or registrations, now or hereafter held or applied for in connection therewith; these marks shall include all marks which are unique to and developed for the Gaming Facility (collectively, the "Nation's Marks"). The Manager hereby disclaims any right or interest therein, regardless of any legal protection afforded thereto. The Manager acknowledges that all of Nation's Marks might not be used in connection with the Gaming Enterprise, and the Nation shall have sole discretion to determine which Nation's Marks shall be so used. The Manager shall not use the Nation's name, or any variation thereof, directly or indirectly, in connection with (a) a private placement or public sale of securities or other comparable means of financing or (b) press releases and other public communications, without the prior written approval of Nation.

The Nation and Manager hereby agree that in the event the Nation and/or Manager is (are) the subject of any litigation or action brought by any party seeking to restrain the use, for or with respect to the Gaming Enterprise, by the Nation

and/or Manager of any Nation's Mark used by Manager for or in connection with the Gaming Enterprise, any such litigation or action shall be defended entirely at the expense of Nation, notwithstanding that Nation may not be named as a party thereto. In the event the Nation desires to bring suit against any user of any Nation's Mark, seeking to restrain such user from using any Nation's Mark, then such suit shall be brought only with the consent of Nation and at the expense of the Nation notwithstanding that such user may be a prior or subsequent user. In all cases the conduct of any suit whether brought by the Nation and/or Manager or instituted against the Nation and/or Manager shall be under the absolute control of the Nation notwithstanding that Nation may not be a party to such suit. The Manager, at its sole cost, shall have the right to engage its own legal counsel and the Manager's own counsel shall have the right to non-controlling participation in any such litigation. The Manager shall have the right at any time during the course of such litigation to withdraw from participation therein.

**21.2. Manager's Marks.** The Nation agrees to recognize the exclusive right of ownership of Manager to all Manager's service marks, trademarks, copyrights, trade names, patents or other similar rights or registrations now or hereafter held or applied for in connection therewith (collectively, the "Manager's Marks"). The Nation hereby disclaims any right or interest therein, regardless of any legal protection afforded thereto. The Nation acknowledges that all of Manager's Marks might not be used in connection with the Gaming Enterprise, and Manager shall have sole discretion to determine which Manager's Marks shall be so used. The Nation covenants that in the event of termination, cancellation or expiration of this Agreement, whether as a result of a default by Manager or otherwise, the Nation shall not hold itself out as, or continue operation of the Gaming Enterprise as Manager's casino nor will it utilize any of Manager's Marks or any variant thereof in the operation of its Gaming Facility. The Nation agrees that Manager or its representative may, at any reasonable time thereafter, enter the Gaming Facility for the sole purpose of removing all signs, furnishings, printed material, emblems, slogans or other distinguishing characteristics which are now or hereafter may be connected or identified with Manager's or which carry any Manager's Mark. Such removal shall be accomplished in a manner which leaves the premises in a condition suitable for appropriate commercial use. The Nation shall not use the Manager's name, or any variation thereof, directly or indirectly, in connection with (a) a private placement or public sale of securities or other comparable means of financing or (b) press releases and other public communications, without the prior written approval of Manager.

The Nation and Manager hereby agree that in the event the Nation and/or Manager is (are) the subject of any litigation or action brought by an party seeking to restrain the use, for or with respect to the Gaming Enterprise, by the Nation and/or Manager of any Manager's Mark used by Manager for or in connection with the Gaming Enterprise, any such litigation or action shall be defended entirely at the

expense of Manager, notwithstanding that Manager may not be named as a party thereto. In the event the Nation desires to bring suit against any user of any Manager's Mark, seeking to restrain such user from using any Manager's Mark, then such suit shall be brought only with the consent of Manager and at the expense of the Nation notwithstanding that such user may be a prior or subsequent user. In all cases the conduct of any suit whether brought by the Nation and/or Manager or instituted against the Nation and/or Manager shall be under the absolute control of the Manager notwithstanding that Manager may not be a party to such suit. The Nation, at its sole cost, shall have the right to engage its own legal counsel and the Nation's own counsel shall have the right to non-controlling participation in any such litigation. The Nation shall have the right at any time during the course of such litigation to withdraw from participation therein.

**22. Confidential and Proprietary Information.** The Nation agrees that Manager has the sole and exclusive right, title and ownership to (i) certain proprietary information, techniques and methods of operating gaming businesses; (ii) certain proprietary information, techniques and methods of designing games used in gaming businesses; (iii) certain proprietary information, techniques and methods of training employees in the gaming business; and (iv) certain proprietary business plans, projections and marketing, advertising and promotion plans, strategies, and systems all of which have been developed and/or acquired over many years through the expenditure of time, money and effort and which Manager and its affiliates maintain as confidential and as a trade secret(s) (collectively, the "Confidential and Proprietary Information").

The Nation further agrees to maintain the confidentiality of such Confidential and Proprietary Information, and upon the termination of this Agreement, return same to Manager, including but not limited to, documents, notes, memoranda, lists, computer programs and any summaries of such Confidential and Proprietary Information. Confidential information must be clearly identified in writing as such in order to be subject to this Section 22.

**23. Execution in Counterpart Originals.** This Agreement is being executed in four counterparts, two to be retained by each party. Each of the four originals is equally valid. This Agreement shall be deemed "executed" and shall be binding upon both parties when properly executed and approved by the Chairman of the NIGC. 7K  
RWB

**24. Enterprise Name.** The Gaming Enterprise shall be operated under the business name of the Nation, the Manager or such other name as the parties may agree.

64 **25. Intent to Negotiate New Agreement.** On or before thirty (30) days after the end of the year of this Agreement, the Nation shall give Manager notice

of its intent regarding its willingness to enter into negotiations for a new Management Agreement to be effective upon the conclusion of this Agreement.

26. **Entire Agreement.** This Agreement, including the Schedules and Exhibits referred to herein, any collateral documents, and any documents executed by the parties simultaneously herewith, constitutes the entire understanding and agreement of the parties hereto and supersedes all other prior agreements and understandings, written or oral, between the parties.

27. **Government Savings Clause.** Each of the parties agrees to execute, deliver and, if necessary, record any and all additional instruments, certifications, amendments, modifications and other documents as may be required by the United States Department of the Interior, B.I.A., the NIGC, the office of the Field Solicitor, or any applicable statute, rule or regulation in order to effectuate, complete, perfect, continue or preserve the respective rights, obligations, liens and interests of the parties hereto to the fullest extent permitted by law; provided, that any such additional instrument, certification, amendment, modification or other document shall not materially change the respective rights, remedies or obligations of the Nation or the Manager under this Agreement or any other agreement or document related hereto, without the consent of the affected party.

Remainder of this page is intentionally blank. Signatures appear on the following pages.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written. By approval and execution of this Agreement by the Tribe, all of the rights duties and obligations of the Tribe are assigned and delegated to the Mohegan Tribal Gaming Authority, as a governmental instrumentality of the Tribe. By execution by the Chairman of the Gaming Authority, the Authority assumes and accepts these rights, duties and obligations. Each party agrees that: (i) the Authority shall act as and on behalf of the Nation under and within the meaning of "Nation" pursuant to this Agreement; (ii) the Authority shall assume and have the exclusive right to perform all of the duties and obligations of the Nation under the Agreement; (iii) the Authority shall have all of the rights of the Nation under the Agreement; and (iv) Trading Cove Associates shall be entitled to and may treat the Authority as Nation for all purposes under this Agreement. The Mohegan Tribe of Indians of Connecticut and Trading Cove Associates hereby acknowledge and consent to this assignment.

**MOHEGAN TRIBE OF INDIANS OF  
CONNECTICUT**

By Ralph W. Sturges  
Ralph Sturges, Chairman and  
Life Time Chief, duly authorized

**MOHEGAN TRIBAL GAMING  
AUTHORITY**

By Ralph W. Sturges  
Ralph Sturges, Chairman,  
Management Board, duly authorized

By Harold A. Monteau  
Harold A. Monteau, Chairman  
National Indian Gaming Commission  
September 29, 1995

**TRADING COVE ASSOCIATES**

By Len Wolman  
Len Wolman, Managing Partner

By Howard B. Kerzner  
Howard B. Kerzner, Managing Partner

**ADDENDUM TO AMENDED AND RESTATED MANAGEMENT  
AGREEMENT BETWEEN THE MOHEGAN TRIBE OF CONNECTICUT  
AND TRADING COVE ASSOCIATES OF EVEN DATE HEREWITH**

TCA agrees that if any person or entity with a financial interest in, or management responsibility for, this contract is formally indicted or comparable action is initiated in any United States Federal or state court, or any foreign court, or comparable jurisdiction, that person or entity shall (1) not be permitted to exercise any management or other control over the gaming operation or TCA (2) have their financial proceeds from the contract placed in escrow until the indictment or comparable action is finally resolved and (3) forfeit all interest in the management contract and the escrowed proceeds if convicted of any misdemeanor involving gaming or any felony. With respect to number (2), such proceeds will be retained in escrow by TCA and will not be transmitted to any intermediate person or entity.

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IN WITNESS WHEREOF, the parties hereto have executed this ADDENDUM on the 29th day September 1995.

**MOHEGAN TRIBE OF INDIANS OF  
CONNECTICUT**

**TRADING COVE ASSOCIATES:**

By *Ralph W. Sturges*  
Ralph Sturges, Life Time Chief

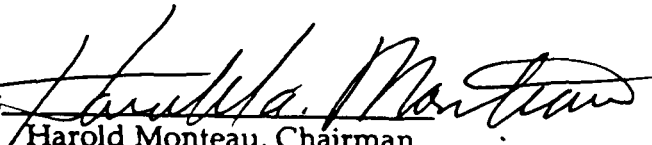
By *Len Wolman*  
Len Wolman, Managing Partner

By *Howard B. Kerzner*  
Howard B. Kerzner  
Managing Partner

**MOHEGAN TRIBAL GAMING  
AUTHORITY**

By *Ralph W. Sturges*  
Ralph Sturges, Chairman  
Management Board, Duly Authorized

APPROVED:

  
Harold Monteau, Chairman  
National Indian Gaming Commission