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MANAGEMENT AGREEMENT

between the

KOOTENAI TRIBE OF IDAHO

and

KOOTENAI TRIBAL DEVELOPMENT CORPORATION

and

HAGADONE HOSPITALITY CO.

Dated as of January 9, 1998

# MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT is entered into as of January 9, 1998, by and between the KOOTENAI TRIBE OF IDAHO (the "Tribe") and its permitted successors and assigns, the KOOTENAI TRIBAL DEVELOPMENT CORPORATION, which is incorporated under the laws of, and wholly owned by the Tribe ("Corporation") and its permitted successors and assigns; and HAGADONE HOSPITALITY CO., an Idaho corporation, and its permitted successors and assigns (the "Manager"), for the operation of a hotel and gaming facility located on the Tribe's trust land in Bonners Ferry, in the State of Idaho.

## ARTICLE I

## RECITALS

Section 1.1. The Tribe is a federally recognized Indian tribe and is entitled to the protections and benefits accorded federally recognized Indian tribes under federal law, including those under the Indian Gaming Regulatory Act of 1988 (25 U.S.C. §2701 et seq.) ("IGRA"), which governs the operation of Class II and Class III gaming activities on lands held in trust for the Tribe, including the Tribe's existing Class II and Class III operation (the "Gaming Operation").

Section 1.2. The Corporation, on behalf of the Tribe, is the operator of the Kootenai River Inn (the "Facility"), which is located on the Tribe's trust land in the City of Bonners Ferry, Idaho, which is more specifically described in Exhibit "A" attached hereto, and which consists of a forty-seven (47) room hotel, restaurant and bar ("Hotel" and "Hotel Operation") and the Gaming Operation, which together constitute the Enterprise ("Enterprise").

Section 1.3. The Tribe has determined that the continued operation of the Enterprise in accordance with IGRA will assist the Tribe in generating the revenues needed to maintain an effective tribal government, provide necessary employment opportunities for tribal members, promote the general welfare of tribal members and achieve tribal self-sufficiency.

Section 1.4. The Tribe and Corporation do not presently possess sufficient technical and financial expertise to manage the Enterprise and have determined that employment of a company with the necessary management expertise will assist the Tribe and Corporation in meeting the above goals. Manager has the requisite expertise and is capable of assisting the Tribe and Corporation in managing, operating and maintaining a high quality Enterprise and instructing members of the Tribe in such undertaking.

Section 1.5. Except as otherwise provided in this Agreement, the Tribe and Corporation desire to grant Manager the exclusive right and obligation to manage, operate and maintain the Enterprise as described in this Agreement and to train Tribal members and others in the operation and maintenance of the Enterprise during the term of this Agreement. Manager desires to perform these functions for the Tribe and Corporation. Notwithstanding the foregoing, the Corporation shall be responsible for setting major policies and objectives, including major transactions.

Section 1.6. This Agreement is entered into pursuant to IGRA. All gaming conducted at the Facility will at all times comply with IGRA, applicable tribal and federal law and the Compact (as defined herein).

Section 1.7 It is the understanding and intention of the parties that the Gaming Operation currently conforms to and complies with IGRA and the Compact. In the event that a final judgment of a court of competent jurisdiction, after all appeals have been exhausted, determines that any aspect of the Gaming Operation does not conform to or comply with IGRA and/or the Compact, the Tribe, Corporation and Manager agree to take all necessary steps within their authority to conform to and comply with IGRA and the Compact. In the event that a final judgment of a court of competent jurisdiction, after all appeals have been exhausted, determines that any gaming activities are not permitted under the Compact, the Tribe, Corporation and Manager agree to take all necessary steps within their authority to cease such activities.

## ARTICLE II

## DEFINITIONS

As used in this Agreement, the terms listed below shall have the meaning assigned to them in this Article.

"Affiliate" shall mean, as to the Manager, the Corporation or the Tribe, any corporation, partnership, limited liability company, joint venture, trust, department, agency or individual controlled by, under common control with, or which controls, directly or indirectly, the Manager, the Corporation or the Tribe.

"BIA" shall mean the Bureau of Indian Affairs of the Department of the Interior of the United States of America.

"Capital Replacement(s)" shall mean any alteration or rebuilding or renovation of the Facility, and any replacement of Furnishings and Equipment, the cost of which is capitalized and depreciated, rather than being expensed, applying generally accepted accounting principles, as described in Section 4.10.

"Class II Gaming" shall mean class II gaming as defined in IGRA.

"Class III Gaming" shall mean class III gaming as defined in IGRA.

"Compact" shall mean the gaming compact between the Tribe and the State of Idaho, entered into on September 8, 1993 and approved by the Department of the Interior on November 10, 1993, pursuant to the IGRA.

"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 by the Chairman of the NIGC;

(ii) receipt by the Manager of all applicable licenses for or related to management of the Enterprise.

"Emergency Condition" shall have the meaning set forth in Section 4.10(b).

"Enterprise" shall mean the Gaming Operation and Hotel Operation, and any other lawful commercial activity allowed in the Facility, including but not limited to, the sale of food, alcohol, tobacco, gifts and souvenirs, except such commercial activity of a Tribal Concessionaire.

"Enterprise Bank Accounts" shall mean those accounts described in Section 4.9.

"Enterprise Employee" shall mean any person employed pursuant to Section 4.7 to perform regular services for the Enterprise in connection with the maintenance, operation, and management of the Enterprise and the Facility.

"Enterprise Employee Policies" shall mean those employee policies and employment practices described in Section 4.7.2.

"Facility" shall mean the Kootenai River Inn and all buildings, structures, and improvements located on the Property and any Furniture, Trade Fixtures, and Equipment attached to, forming a part of, or necessary for the operation of the Enterprise.

"Fiscal Year" shall mean the 12-month period commencing on January 1 in any year and ending on December 31 in the same year, or any other 12-month period agreed to by the Corporation and Manager as the fiscal year of the Enterprise.

"Furniture, Trade Fixtures and Equipment" shall mean all furniture, trade fixtures and equipment required or used in the operation of the Enterprise in accordance with the standards set forth in this Agreement, including, without limitation:

(i) cashier, money sorting and money counting equipment, surveillance and communication equipment and security equipment;

(ii) all Gaming and Hotel equipment;

(iii) office furnishings and equipment;

(iv) all other furnishings and equipment hereafter located and installed in or about the Facility which are used in the operations of the Enterprise in accordance with the standards set forth in this Agreement.

"Gaming" shall mean any and all activities constituting Class II or Class III Gaming.

"General Manager" shall mean the person employed by the Corporation to direct the operation of the Enterprise and selected pursuant to Section 4.7.4.

"Generally Accepted Accounting Principles" or "GAAP" shall mean 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 (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 Hotel Revenue" shall mean all the revenue from the Hotel Operation before deducting costs and expenses, determined in accordance with GAAP consistently applied.

"Gross Revenues" shall mean all revenues of any nature derived directly or indirectly from the Enterprise including, without limitation, Gross Gaming Revenue (Win), Gross Hotel Revenue, food and beverage sales and other rental or other receipts from lessees, sublessees, licensees and concessionaires (excluding revenues of Tribal Concessionaires), and revenue recorded for Promotional Allowances.

"House Bank" shall mean the amount of cash, chips, tokens and plaques that the General Manager from time to time determines necessary to have at the Facility daily to meet the Facility's cash needs.

"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.

"Internal Control Systems" shall mean the systems described in Section 4.11.

"Legal Requirements" shall mean any and all federal and tribal laws, ordinances, rules, regulations, permits, licenses and certificates, in any way applicable to the Tribe, Corporation, Manager, the Property, the Facility or the Enterprise, including without limitation, IGRA, the Compact and the Tribal Gaming Ordinance.

"Manager" shall mean Hagadone Hospitality Co.

"Management Agreement" shall mean this Agreement and may be referred to herein as the "Agreement."

"Management Fee" shall mean the management fee described in Section 3.3.

"Material Breach" shall mean any of the events described in Section 8.1.

"Minimum Balances" shall mean the amounts described in Section 4.9.

"Minimum Guaranteed Monthly Payment" shall mean that payment due the Tribe each month commencing in the month after the Effective Date occurs in accordance with 25 U.S.C § 2711(b)(3) and Section 6.2.

"Monthly Distribution Payment" shall have the meaning set forth in Section 6.1.

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

"Net Revenues" shall mean the sum of "Net Revenues (gaming)" and "Net Revenues (other)."

"Net Revenues (gaming)" shall mean Gross Gaming Revenue (Win) of the Enterprise from Gaming less (a) all Gaming related Operating Expenses, excluding the Management Fee, (b) the retail value of Promotional Allowances, if any, and (c) the following revenues actually received by the Gaming Operation and included in Gross Revenues:

(i) any credits or refunds made to customers, guests or patrons;

(ii) any sums and credits received by the Gaming Operation for lost or damaged merchandise;

(iii) any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, tourist taxes or charges received from patrons and passed on to a governmental or quasi governmental entity;

(iv) any proceeds from the sale or other disposition of furnishings and equipment or other capital assets;

(v) any fire and extended coverage insurance proceeds other than for business interruption;

(vi) any condemnation awards other than for temporary condemnation;

(vii) any proceeds of financing or refinancing;

(viii) the proceeds from the sale, transfer, assignment or sublease of all or any part of the Corporation's leasehold estate; and

(ix) proceeds from any compensation payments, awards, settlements or other disposition of a claim, lawsuit, or legal or arbitration proceeding

except only to the extent the net proceeds, after payment of costs and expenses and attorneys' fees, represent gross income.

It is intended that this provision be consistent with 25 U.S.C. §2703(9).

"Net Revenues (other)" shall mean all Gross Revenues of the Enterprise from all other sources in support of Gaming not included in "Net Revenues (gaming)," such as the Hotel Operation, food and beverage, entertainment and retail less (a) all non-gaming related Operating Expenses, excluding the Management Fee (b) the retail value of Promotional Allowances, if any, and (c) the following revenues actually received by the Enterprise (excluding Net Revenues (gaming)) 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 for lost or damaged merchandise;

(iv) any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, tourist taxes or charges 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; and

(viii) any proceeds of financing or refinancing;

(ix) the proceeds from the sale, transfer, assignment or sublease of all or any part of the Corporation's leasehold estate; and

(x) proceeds from any compensation payments, awards, settlements or other disposition of a claim, lawsuit, or legal or arbitration proceeding except only to the extent the net proceeds, after payment of costs and expenses and attorneys' fees, represent gross income.

It is intended that this provision be consistent with 25 U.S.C. §2703(9).

"Operating Budget and Annual Plan" shall mean the operating budget and plan described in Section 4.9.

"Operating Expenses" shall mean all expenses of the operation of the Enterprise determined in accordance with GAAP consistently applied, including but not limited to the following:

(i) the payment of salaries, wages, and benefit programs for Enterprise Employees;

(ii) Operating Supplies for the Enterprise;

(iii) utilities;

(iv) ordinary remodelling, repairs and maintenance of the Facility (excluding Capital Replacements);

(vii) interest on installment contract purchases or other interest charges on debt approved by the Corporation;

(viii) insurance and bonding fees;

(ix) advertising and marketing, including busing and transportation of patrons to the Facility;

(x) accounting, legal and other professional fees, including the costs of preparation of the annual audit in accordance with Section 4.14;

(xi) security and surveillance costs;

(xii) reasonable travel expenses for officers and employees of the Enterprise, or the Manager, to the extent approved by the Corporation, to inspect and oversee the Enterprise, subject to the budget agreed upon by the Corporation;

(xiii) lease and rental payments for Furniture, Trade Fixtures, and Equipment to the extent approved by the Corporation;

(xiv) trash removal;

(xv) costs of goods sold;

(xvi) other expenses designated as Operating Expenses in accordance with the Operating Budget and Annual Plan referred to in Section 4.9

(xvii) expenses specifically designated as Operating Expenses in this Agreement;

(xviii) depreciation and amortization of the Facility based on an assumed 30 year life, and depreciation and amortization of all other assets in accordance with GAAP consistently applied;

(xix) recruiting and training expenses;

(xx) fees paid to the NIGC under IGRA or those payments and reimbursements provided for in Articles 20.1 and 20.3 of the Compact, less any amounts collected from third parties to defray such payments or reimbursements.

(xxii) any fees and expenses payable to the Tribe, the Tribal Gaming Commission or any Affiliate of the Tribe in connection with the licensing of the Facility and the Enterprise;

(xxiii) taxes, other than tribal taxes, paid by the Enterprise;

(xxiv) franchise fees and charges;

(xxv) uncollectible amounts due from lodgers or other customers; and

(xxvi) uninsured judgments, fines and penalties rendered against or in respect of, and the expense of litigation involving, the Enterprise or the Facility, subject to the Indemnification provisions of Sections 11.16 and 11.17.

"Operating Supplies" shall mean food and beverages (alcoholic and nonalcoholic) and other consumable items used in the operation of the Enterprise, such as playing cards, tokens, chips, plaques, dice, fuel, materials necessary for the operation of the Hotel, soap, cleaning materials, matches, paper goods, stationery and all other similar items.

"Promotional Allowances" shall mean the retail value of complimentary food, beverages, merchandise, and tokens for Gaming, provided to patrons as promotional items.

"Property" shall mean the real property described on Exhibit A hereto.

"State" shall mean the State of Idaho.

"Term" shall mean the term of this Agreement as described in Section 3.2.

"Tribal Concessionaire" shall have the meaning as provided in Section 4.2.

"Tribal Council" shall mean the duly elected governing legislative body of the Tribe.

"Tribal Gaming Commission" shall mean the Kootenai Tribe of Idaho Gaming Commission created pursuant to the Tribal Gaming Ordinance to regulate the Gaming of the Tribe in accordance with the Compact, IGRA and the Tribal Gaming Ordinance.

"Tribal Gaming Ordinance" shall mean the ordinance enacted by the Tribe, which authorizes and regulates Gaming on lands subject to the governmental power of the Tribe, as the same may be amended from time to time.

## ARTICLE III

## ENGAGEMENT OF MANAGER

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

Section 3.1. Engagement of Manager. The Tribe and the Corporation hereby retain and engage the Manager as the manager of the Enterprise pursuant to the terms and conditions of this Agreement. The Manager hereby accepts such retention and engagement, subject to the receipt of all necessary regulatory approvals.

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Section 3.4. Status of Property; Access. The Tribe represents and covenants that the Property is held in Trust by the United States of America for the benefit of the Tribe and is eligible as a location upon which Gaming can occur. The Property shall maintain such status throughout the Term of this Agreement. The Tribe and the Corporation covenant that, during the Term of this Agreement, the Manager shall and may peaceably have complete access to and presence in the Facility in accordance with the terms of this Agreement.

Section 3.5. Manager's Compliance with Law, Licenses. The Manager covenants that it will comply at all times with all Legal Requirements, including the Tribal Gaming Ordinance, the IGRA, the Compact, and any licenses issued under any of the foregoing. The Tribe shall not unreasonably withhold, delay, withdraw, qualify or condition such licenses as the Tribe or its political subdivisions are authorized to grant.

Section 3.6. Compliance with IGRA and Compact. All Gaming at the Facility shall at all times comply with the provisions of IGRA and the Compact.

Section 3.7. Fire and Safety. The Manager shall ensure that the Facility shall be maintained and operated in compliance with all applicable fire and safety laws.

Nothing in this Section shall be construed as a grant of any jurisdiction to the State of Idaho or any political subdivision thereof over the Enterprise, the Property or the Facility. The Tribe shall be responsible for arranging fire protection and police services for the Facility. The Manager shall cooperate with the Tribe in arranging such services. It shall be the responsibility of the Tribe and not the Gaming Operation to pay the costs of any increased public safety services.

Section 3.8. Compliance with the National Environmental Policy Act. If applicable, with the assistance of the Manager, the Tribe shall supply the NIGC with all information necessary for the NIGC to comply with the regulations of the NIGC issued pursuant to the provisions of the National Environmental Policy Act (NEPA).

Section 3.9. Satisfaction of Effective Date Requirements. The Manager and the Tribe each agree to cooperate and to use their best efforts to satisfy all of the conditions of the Effective Date at the earliest possible date.

Section 3.10 Franchise Agreement. The Manager shall operate the Hotel as a "Best Western" hotel in accordance with the provisions of this Agreement and with the applicable franchise agreement. In the event of a conflict between this Agreement and the franchise agreement, the provisions of this Agreement shall prevail, unless the Tribe or Corporation provides otherwise in writing.

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## ARTICLE IV

## BUSINESS AND AFFAIRS IN CONNECTION WITH THE ENTERPRISE

Section 4.1. Manager's Authority and Responsibility. The Manager shall conduct and direct all business and affairs in connection with the operation, management and maintenance of the Enterprise and the Facility, and shall have the responsibility for paying bills and expenses of the Enterprise as Operating Expenses. The Manager is hereby granted the necessary power and authority to act in order to fulfill all of its responsibilities under this Agreement. The Manager hereby accepts such retention and engagement.

The Tribe shall have the sole proprietary interest in and ultimate responsibility for the conduct of all Gaming conducted by the Enterprise, subject to the rights and responsibilities of the Corporation and Manager under this Agreement.

Section 4.2. Tribal Concessionaire. The Corporation reserves the right to grant an exclusive concession to operate a shop for the sale of gifts, cards, souvenirs, cigarettes and other tobacco products, personal care products, sundries, nonprescription drugs, newspapers, magazines, novelties, candy, snacks, and similar products usually sold in hotel shops for the benefit of hotel guests either to the Kootenai Tribe of Idaho, tribal members, or a tribal entity, including the Corporation ("Tribal Concessionaire"). The Tribal Concessionaire shall have the exclusive right to occupy without charge the area designated as the location of such shop, and neither the gross income nor the expenses of the business of the Tribal Concessionaire shall be counted in determining Manager's Management Fee.

Section 4.3. Duties of Manager. In managing, operating and maintaining the Enterprise and the Facility under this Agreement, the Manager's duties shall include, without limitation, the following:

4.3.1. Maintenance and Improvement. The Manager shall be responsible for the maintenance and improvement of the Enterprise and the Facility, and shall use reasonable measures for the orderly physical administration, management, and operation of the Enterprise and the Facility, including without limitation cleaning, painting, decorating, plumbing, carpeting, grounds care and such other maintenance and repair work as is reasonably necessary.

4.3.2. Compliance. The Manager shall comply with all duly enacted statutes, regulations and ordinances of the Tribe and all other applicable laws.

4.3.3. Contracts. The Manager, through the General Manager as provided in this section 4.3.3, is authorized to make, enter into and perform in the name of and for the account of the Tribe and Corporation, doing business as the Enterprise, such contracts as are deemed necessary by the Manager to perform its obligations under this Agreement, provided such contracts do not obligate the Enterprise to pay sums not approved in the Operating Budget and Annual Plan or the Capital Budget. Contracts for the operations of the Enterprise shall be entered into in the name of the Enterprise and signed by the General Manager, provided, however, that the General Manager shall have no authority to (a) waive or impair the sovereign immunity of the Tribe or the Enterprise or (b) obligate or encumber any funds or property of the Tribe, except as provided for in the Enterprise's properly approved Operating Budget.

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4.3.3.1 Preference in Contracting. In entering into contracts for the supply of goods and services for the Enterprise, the Manager shall, to the maximum extent economically feasible and permitted by law, give preference to qualified members of the Tribe, their spouses and family members, and qualified business entities certified by the Tribe as owned by members of the Tribe, their spouses and family members; including the following:

(a) contracts for services normally associated with Hotel operations, including but not limited to, laundry, extraordinary maintenance and repair, and airport or similar transportation;

(b) contracts for tourist-related services, including but not limited to, hunting and fishing lessons, activities and expeditions; cross-country skiing and snowshoe equipment rentals, lessons, and activities; guided tours; nature walks; and canoe and other boating lessons and activities; and

(c) contracts for supplies, inventory, and consumables, including but not limited to, fresh game and fish and other food products produced by the Tribe, members of the Tribe or related entities.

"Qualified" shall mean a person or a business entity who or which, in the judgment of the Manager and Corporation, is able to provide services at competitive prices, has demonstrated skills and abilities to perform the tasks to be undertaken in an acceptable manner, and can meet the reasonable bonding requirements of the Enterprise.

4.3.4. Enterprise Operating Standards. The Manager shall operate the Enterprise in a proper, efficient and competitive manner in accordance with operating standards which are consistent with the operating standards of the casino resort industry generally. Hours of operation shall be established by the Corporation after consultation with the Manager. The operation of the Enterprise shall at all times comply with the requirements of the Tribe's Gaming Ordinance, the Compact and applicable law.

Section 4.4. Security. The Manager shall be responsible for the hiring and supervision of security personnel for the Facility and the operation of the Enterprise. Any security officer shall be licensed by the Tribal Gaming Commission and bonded and insured in an amount which the Manager and Corporation determine to be commensurate with his or her enforcement duties and obligations.

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Section 4.5. Damage, Condemnation or Impossibility of the Enterprise. If, during the Term of this Agreement, the Facility is damaged or destroyed by fire, war or other casualty, or by an Act of God, or is taken by federal condemnation or sold under the threat of federal 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:

4.5.1. Recommencement of Operations. If Gaming on the Property is prohibited by Legal Requirements, the Manager shall continue its interest in this Agreement as it relates to the management of and compensation for the Hotel. If at some point during the Term of this Agreement, the Tribe, Corporation and Manager all agree that recommencement of Gaming at the Facility is legally and commercially feasible, then all of the terms of this Agreement including those with respect to Gaming, shall be in full force and effect.

4.5.2. Repair or Replacement. If the Facility is damaged, destroyed or condemned so that either Gaming or the Hotel Operation can no longer be conducted at the Facility, the Facility, at the option of the Corporation, may be reconstructed if the insurance or condemnation proceeds are sufficient to restore or replace the Facility to a condition at least comparable to that before the casualty occurred. If the insurance proceeds or condemnation awards are insufficient to reconstruct the Facility to such condition, the Manager may, in its sole discretion, offer to lend the Tribe or Corporation such additional funds as are necessary to reconstruct the Facility to such condition and such funds shall, with the prior approval of the Tribal Council and the BIA or the

NIGC, as appropriate, constitute a loan to the Enterprise, secured by the revenues from the Enterprise and repayable upon such terms as may be agreed upon by the Tribe, the Corporation and the Manager. The Tribe may also, in its sole discretion, provide from tribal funds or borrow from a third party such funds as are necessary to rebuild the Facility. In such event, these funds shall be treated as a tribal loan to the Enterprise and shall be repaid under such terms and conditions as the Tribal Council and the Manager may agree.

If the insurance proceeds are not sufficient and are not used to repair the Facility, and neither the Manager, the Tribe, or the Corporation, wishes to provide the additional funds necessary to re-build and reopen the facility, the Tribe, Corporation and the Manager shall jointly 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 repayment of any loans; two, any undistributed Net Revenues pursuant to Section 6 of his Agreement; and third, any surplus distributed to the Corporation.

4.5.3. Other Business Purposes. The Manager shall have the option to use the Facility for other purposes included in the Enterprise and reasonably incidental to Gaming, provided that the Corporation has approved such purposes. For any purpose other than Gaming, the Manager shall obtain all approvals necessary under applicable law.

4.5.4. Termination of Gaming. The Manager shall have the option at any time within a 60-day period following the cessation of Gaming on the Property to notify the Tribal Council in writing that it is terminating operations under this Agreement, in which case the Manager shall retain any rights it may have to any accrued and unpaid Management Fee due under Section 3.3. If the Manager does not elect to terminate this Agreement, it may take whatever action may be necessary to reduce expenses during such termination of Gaming.

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Section 4.6. Alcoholic Beverages. During the Term of this Agreement alcoholic beverages may be served at the Facility if permissible in accordance with tribal, federal and other applicable law.

Section 4.7. Employees.

4.7.1. Manager's Responsibility. The Manager, subject to the terms of this Agreement and consistent with the Enterprise Employee Policies, shall have the exclusive responsibility and authority for the selection, hiring, control, training, promotion and discharge of all Enterprise Employees and the sole responsibility for determining whether a prospective Enterprise Employee is qualified and the appropriate level of compensation to be paid.

4.7.2. Enterprise Employee Policies. The Manager has established personnel policies and procedures and employment practices (attached hereto as Exhibit "B"). The Enterprise Employee Policies include a grievance procedure for the resolution of disputes between the Manager and Enterprise Employees. The Manager shall be responsible for administering the Enterprise Employee Policies and all such actions shall comply with applicable tribal law.

4.7.3. Enterprise Employees. All Enterprise Employees shall be employees of the Tribe. All Enterprise Employees must be licensed by the Tribal Gaming Commission if required by the Compact or applicable tribal and federal law.

4.7.4 General Manager. Manager shall be responsible for the hiring and discharge of the General Manager subject to the written approval of the Corporation. The General Manager shall be an employee of the Tribe.

4.7.5. Employee Background Checks. A background investigation may be conducted on each applicant for employment if required by the Compact, the Tribal Gaming Ordinance, IGRA or other applicable law or regulation.

4.7.6. Indian Preference, Recruiting and Training. In order to maximize the benefits of the Enterprise to the Tribe, the Manager shall, to the extent permitted by applicable law, give preference in recruiting, training and employment to qualified members of the Tribe, their spouses and children or such other persons as duly enacted tribal preference laws require in all job categories of the Enterprise. Manager shall notify the Tribe's employment officer or other official designated by the Tribe in writing whenever a permanent position becomes available and hold the position open for at least four (4) days thereafter. If no qualified Indian applies for the position within the four-day period, Manager shall make reasonable efforts to employ

economically disadvantaged and previously unemployed or underemployed residents of Bonners Ferry, Idaho, and surrounding area. In particular, the Manager shall:

(i) operate a management training program for members of the Tribe, cause members of the Tribe to be employed in management trainee positions to the maximum extent feasible and to the extent permitted by law, and cause them to be promoted to permanent management positions whenever such positions are available and members of the Tribe demonstrate their qualification; and

(ii) abide by any duly enacted tribal preference laws.

4.7.7. Removal of Employees. The Manager will act in accordance with the Enterprise Employee Policies with respect to the discharge, demotion or discipline of any Enterprise Employee.

Section 4.8. Marketing and Advertising. The Manager shall have responsibility to advertise and promote the Facility, the budget for which shall be included in the annual operating budget prepared by the Manager and approved by the Corporation pursuant to Section 4.9. The Manager may participate in sales and promotional campaigns and activities involving complimentary rooms, food, beverage, shows, chips and tokens. In marketing and advertising the Facility, the Manager shall have the right to use marketing and advertising services of employees of the Manager and its Affiliates not located at the Facility. The marketing plan may include referring customers from any of Manager's other facilities in accordance with the Annual Plan and when and where applicable, coordinate and cooperate with the local and international sales and marketing programs of Best Western and other hotels and motels and with tour programs marketed by airlines, travel agents and government tourist departments when Manager or the Corporation deems such cooperation, coordination and participation advisable.

Section 4.9. Operating Budget and Annual Plan. The Manager shall, not less than 30 days after the commencement of each Fiscal Year, submit to the Corporation, for approval, a proposed Operating Budget and Annual Plan for such Fiscal Year. The Operating Budget and Annual Plan shall include the Minimum Balances which must remain in the Enterprise Bank Accounts and the House Bank as of the end of each month during the Fiscal Year to ensure that sufficient money will be available for working capital purposes (Operating Capital), the House Bank and other expenditures authorized under the Operating Budget and Annual Plan.

The Operating Budget and Annual Plan for the Enterprise shall comprise the following:

(a) a business and marketing plan for the Fiscal Year;

(b) a statement of the estimated income and expenses for the Fiscal Year, including estimated Gross Revenues and Operating Expenses and estimated results of the operation during each month of the Fiscal Year; and

(c) either as part of the statement of the estimated income and expenses referred to in clause (b), or separately, budgets (and timetables and requirements of the Manager) for:

(i) salaries,

(ii) repairs and maintenance,

(iii) insurance premiums

(iv) Capital Replacements,

(v) Furnishings and Equipment,

(vi) marketing, advertising and business promotion programs,

(vii) Promotional Allowances, and

(viii) any other items deemed appropriate by Manager or requested by the Corporation.

The parties shall meet sometime during the first two weeks of February to review the proposed Operating Budget and Annual Plan. The Corporation shall review and approve the Operating Budget and Annual Plan on a line-by-line basis. The Corporation's approval of the Operating Budget and Annual Plan shall not be unreasonably withheld or delayed. Manager shall make reasonable revisions to the plan unless a revision would unreasonably hinder the profitability of the Enterprise or render operations economically infeasible. If the Operating Budget and Annual Plan is not approved, Manager shall continue to operate the Enterprise in accordance with this Agreement and the existing, approved plan and budget and shall be authorized to make only such additional expenditures from Enterprise Bank Accounts as are reasonably necessary for continued operations.

The Tribe and the Manager acknowledge that the Operating Budget and Annual Plan is intended only to be a reasonable estimate of the Enterprise's revenues and expenses for the relevant Fiscal Year. The Manager shall not be deemed to have made any guarantee concerning projected results contained in the Operating Budget or Annual Plan.

The Manager may, after notice to and approval by the Corporation, revise the Operating Budget and Annual Plan from time to time as may be necessary to reflect any unpredicted significant changes, variables or events or to include significant additional, unanticipated items of expense. The Manager may, upon five business days' notice to the Corporation, reallocate part or all of the amount budgeted with respect to any line item to another line item.

Section 4.10. Capital Replacements. The Corporation shall expend such amounts for Capital Replacements as shall be provided in the Operating Budget and Annual Plan or as may be required to:

(a) maintain the Enterprise in compliance with any Legal Requirements, or

(b) correct any condition of an emergency nature, including, without limitation, maintenance, replacements or repairs which, in the Manager's judgment, require immediate action to preserve and protect the Facility, assure its continued operation, or protect the comfort, health, safety and/or welfare of the Enterprise's guests or employees (an "Emergency Condition").

The Manager shall be responsible for the design and installation of Capital Replacements, subject to approval by the Corporation. The design and installation of Capital Replacements shall be effected in a manner so as to minimize interference with or disruption of ongoing operations.

Section 4.11. Internal Control Systems. The Manager shall install systems for the monitoring of all funds (the "Internal Control Systems") which shall comply with all Legal Requirements, including but not limited to those contained in the Tribal Gaming Ordinance, the Compact and IGRA. The Tribal Gaming Commission shall have the right, at any time, to inspect and review all Internal Control Systems and any changes instituted to the Internal Control Systems, and to retain an auditor to review the adequacy of the Internal Control Systems.

Section 4.12. Banking and Bank Accounts. Funds of the Enterprise shall be deposited in an account or accounts of a type, form and name, and in a bank or banks, approved by the Tribe. Withdrawals from such bank accounts shall be made

by the parties authorized by this Agreement. The Manager shall be entitled to withdraw and expend funds from such bank accounts amounts sufficient to comply with the terms of this Agreement.

Section 4.13. Insurance. The Manager, on behalf of the Enterprise and the Tribe, shall arrange for, obtain and maintain, with responsible insurance carriers licensed to do business in Idaho, insurance in such amounts as Manager and Corporation deem necessary, but in no case less than any amount required by applicable law, or the industry standard for comparable resort or gaming operations, if any, including but not limited to the following:

(a) Public and automobile liability;

(b) Property loss or damage;

(c) Theft or damage to guests' property;

(d) Comprehensive Dishonest, Disappearance, and Destruction (3-D) Coverage, Insuring Agreement I - Employee Dishonesty and Insurance Agreement V - Depositors Forgery;

(e) Insurance against such other operating risks against which is now or hereafter may be customary to insure in the operation of similar properties, and other insurance which manager shall deem advisable, subject to the prior written consent of the Corporation; and

(f) Such Workers' Compensation, Employer's Liability, or similar insurance as may be required by law.

Both the Corporation and Manager shall be named as an insured as their interests may appear on all policies issued pursuant to this Section 4.13. To the extent feasible, each policy of insurance obtained pursuant to this Section 4.13. shall contain a provision that waives the right of the carrier to assert the defense of sovereign immunity on behalf of the corporation up to the limits of the policy.

At least ninety (90) days prior to the expiration of any insurance policy, Manager shall prepare specifications for the policies to be issued for the ensuing year and will provide copies to the Corporation. The Corporation shall have ten (10) working days thereafter to suggest modifications to such specifications to Manager, who will make reasonable corrections and obtain the necessary coverage. With the Corporation's consent, Manager may provide insurance under its blanket policies; provided, however, that at all times the Corporation shall be named as an additional named insured.

Section 4.14. Accounting and Books of Account.

4.14.1. Operating Statements. The Manager shall prepare and provide monthly, quarterly and annual financial reports and operating statements to the Corporation and Tribe and to such other parties as the Compact or applicable law may require. The operating statements shall comply with all Legal Requirements including, but not limited to, those of the Compact and applicable federal law and regulations and shall include an income statement, statement of cash flows, and balance sheet for the Enterprise. Such statements shall include the Operating Budget and Annual Plan, and shall include comparative statements from the comparable period for the prior year of all revenues, and all other amounts collected and received and all deductions and disbursements made therefrom in connection with the Enterprise. All such statements shall be prepared in accordance with GAAP consistently applied.

4.14.2. Books of Account. The Manager shall maintain full and accurate books of account and records at an office in the Facility and at such other locations as may be determined by the Manager. The Tribal Gaming Commission, and any government official authorized by law to have such access, shall have immediate access to the daily operations of the Enterprise and the unlimited right to inspect, examine and copy all such books and supporting business records. Such rights may be exercised through a duly authorized agent, employee, attorney, or independent accountant acting on behalf of the Tribal Gaming Commission or the authorized government agency, provided that the authority of said individual is first presented in writing to the Manager.

4.14.3. Accounting Standards. The Manager shall maintain the books and records of the Enterprise in conformity with GAAP consistently applied. The Manager shall establish and maintain accounting systems and procedures which shall comply with all applicable Legal Requirements including, but not limited to, the Compact and tribal and federal laws or regulations and, at a minimum, shall (a) include an adequate system of internal accounting controls, (b) permit the preparation of financial statements in accordance with GAAP, (c) be susceptible to audit as required by the Tribal Gaming Ordinance, the Compact, IGRA and other applicable laws, (d) if Class II Gaming is conducted at the Enterprise, allow the Tribe and the NIGC to calculate an annual fee payable under 25 C.F.R. §514.1, (e) permit the calculation and payment of the Management Fee, and (f) provide for any appropriate allocation of Operating Expenses or overhead expenses among the Tribe, the Enterprise, the Manager, and any other user of shared facilities and services.

4.14.4. Annual Audit. An independent certified public accounting firm selected by the Tribe and approved by the Tribal Gaming Commission shall perform an annual audit of the books and records of the Gaming Operation. Said audit shall meet all legal requirements of the Tribal Gaming Ordinance, the Compact, IGRA and other applicable law and shall, unless otherwise authorized by Tribal Council resolution, be separate and distinct from any audit required by the Single Audit Act of 1984, 31 U.S.C. §750 et seq. The Tribal Gaming Commission and the NIGC and any other legally authorized government agency shall also have the right to perform special audits of the Enterprise on any aspect of the Enterprise and its operations at any time without restriction. Copies of such audits shall be provided by the Tribe to all applicable federal and state agencies, as may be required by law, and may be used by the Manager for reporting purposes under federal and state securities laws, if required. The fees for the services of the independent auditor shall be an Operating Expense.

4.14.5 Operating Capital. It shall be the responsibility of the Tribe to provide operating capital for the Enterprise.

## ARTICLE V

## LIENS AND ENCUMBRANCES

Section 5.1. Liens. The Tribe specifically warrants and represents to the Manager that, during the Term of this Agreement, the Tribe shall not allow any person or entity to obtain any interest in this Agreement without the prior written consent of the Manager.

The Manager specifically warrants and represents to the Tribe and the Corporation that, during the Term of this Agreement, the Manager shall not act in any way, either directly or indirectly, to cause any person or entity to become an encumbrancer or lienholder of the Property or the Facility or to obtain any interest in this Agreement without the prior written consent of the Tribal Council and Corporation.

## ARTICLE VI

## PAYMENTS OF FEES AND TRIBAL DISTRIBUTIONS

Section 6.1. Payment of Fees and Tribal Disbursements. Within 21 days after the end of each calendar month, the Manager shall calculate the Gross Revenues, Operating Expenses, and Net Revenues of the Enterprise for such month's operations and for the year's operations to date. Such calculations shall be presented in writing to the Corporation and the Tribal Council. Thereupon, the Manager shall disburse funds from the Enterprise 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:

(i) the Minimum Guaranteed Monthly Payment described in Section 6.2; and

(ii) the Management Fee.

All remaining Net Revenues (the "Monthly Distribution Payment") shall be distributed to the Tribe at the same time the Management Fee is paid.

Section 6.2. Minimum Guaranteed Monthly Payment. The Manager shall guarantee that the Tribe receives [redacted] from the Enterprise (the "Minimum Guaranteed Monthly Payment"), beginning on the Effective Date and continuing for the remainder of the Term. The Minimum Guaranteed Monthly Payment shall have preference over the retirement of development costs, if any. The Minimum Guaranteed Monthly Payment shall be payable to the Tribe on the 21st day of each calendar month following the month in which the Effective Date occurs, which payment shall have priority over the Management Fee. If the Effective Date is a date other than the first day of a calendar month, the first payment will be prorated from the Effective Date to the end of the month. Minimum Guaranteed Monthly Payments shall be charged against the Tribe's distribution of Net Revenues for each month provided, however, where the Net Revenues in a given month are less than [redacted] the Manager shall advance the amount necessary to compensate for the deficiency from its own funds, subject to full reimbursement by the Tribe in subsequent months from net revenues that exceed [redacted] No Minimum Guaranteed Monthly Payment shall be owed for any months during which Gaming is suspended or terminated during the entire month at the Facility pursuant to Section 4.5, and the obligation to make Minimum Guaranteed Monthly Payments shall cease upon termination of this Agreement. In the event that Gaming is suspended or terminated for a period of time in any given month, Manager will

guarantee payment of a prorata share of the Minimum Guaranteed Monthly Payment. Except as provided in the preceding sentence of this Section 6.2, the Manager's obligation to pay the Tribe the Minimum Guaranteed Monthly Payment is unconditional, and shall not be affected by the actual level of funds generated by the Enterprise.

Section 6.3. Payment of Net Revenues. The Net Revenues paid to the Tribe pursuant to this Article VI shall be payable to the Tribe's bank account specified by the Tribal Council.

## ARTICLE VII

## TAXES

Section 7.1. Compliance with Internal Revenue Code. 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.

Section 7.2. Tribal Taxes. The Tribe agrees that neither it nor any agent, agency, affiliate or representative of the Tribe will impose any taxes, fees, assessments, or other charges of any nature whatsoever on the Management Fee, or on the Enterprise, the Facility or the revenues therefrom; provided, that the Tribe may assess license fees reflecting reasonable regulatory costs incurred by the Tribal Gaming Commission. The Tribe 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 stockholders, officers, directors, or employees.

Nothing in this Section 7.2 shall be construed to prohibit the Tribe from charging vendors reasonable business and gaming license fees and/or taxing the sale of goods or services to or by the Enterprise in amounts equivalent to any state taxes that are or would otherwise be applicable but for the Tribe's status as an Indian tribe; provided that no such tax shall be applied to any goods or services supplied as Promotional Allowances.

Section 7.3. Assistance in Preparing Tax Returns. Information necessary to prepare applicable tax documents of the Enterprise shall be furnished by the Manager to the Corporation on or before February 28th of each year. At the Corporation's request, and expense, such information shall be audited before presentation, provided the request is received in time to comply. Decisions and elections related to tax issues of the Enterprise shall be explained to and approved by the Corporation. Manager shall give prompt notice to the Corporation upon receipt of advice that the Internal Revenue Service intends to examine the Enterprise's tax documents for any year.

Section 7.4 Withholding Taxes. Manager shall be responsible for withholding and paying, as an Operating Expense, all applicable taxes and contributions with respect to salaries or other contributions or benefits paid to Enterprise Employees. The Manager shall make all returns and/or reports required in connection with any applicable law.

## ARTICLE VIII

## TERMINATION

Section 8.1. Termination for Material Breach. Either party may terminate this Agreement, by written notice effective 30 days after receipt, for Material Breach. For purposes of this Section 8.1, a "Material Breach" shall consist of the following:

a. the failure of a party to pay any amount owed hereunder to the other party when due and the continuation of such default for a period of ten days after written notice;

b. the failure of a party to perform any other duty or obligation on its part hereunder for a period of 30 days after written notice, or for such longer period as may be necessary to effectuate a cure of such default provided that such default is capable of being cured and the defaulting party has commenced the cure within such 30-day period and is proceeding with due diligence to effect such cure; or

c. the Manager or Corporation is declared bankrupt, a voluntary petition for bankruptcy is filed, a receiver is appointed for any portion of the Manager's or Corporation's property in any judicial proceeding, or the Manager or Corporation shall make or attempt to make an assignment for creditors or take advantage of any insolvency law.

In accordance with Section 8.1.b., the discontinuance or correction of a Material Breach shall constitute a cure thereof.

No party hereto shall be liable or be in breach of any provision of this Agreement for any failure or delay in performing any obligation hereof if such failure or delay is due to fire, flood, act of God, war, civil disorder, valid Federal or state governmental order, or any other cause which is beyond the reasonable control of such party; provided, however, that such party so hindered shall promptly give notice to the other party of such an occurrence and shall use its best efforts and take necessary actions to eliminate the effects thereof to the extent possible.

Section 8.2. Manager's Right to Terminate Agreement. In addition to its ability to terminate this Agreement for a Material Breach by the Tribe, the Manager may terminate this Agreement, by written notice effective 30 days after receipt, if the Manager has reason to believe that the performance by it or the Tribe of any obligation imposed under this Agreement may reasonably be expected to result in the breach of any Legal Requirement and the parties have been unable to agree upon waiver of such performance within 30 days written notice by the Manager.

Section 8.3. Provisions Applying to any Termination. The following provisions shall apply to any termination of this Agreement under this Article VIII.

a. During the 30-day notice period, either party may submit to arbitration, under the dispute resolution provisions of this Agreement at Section 9.4.2.

b. Regardless of the reason giving rise to termination, the parties shall retain all money previously and properly paid to them pursuant to this Agreement, the Tribe shall retain title to all Enterprise and Facility fixtures, improvements, supplies, equipment, funds and accounts, and the Manager shall retain the rights to any accrued and unpaid Management Fee due under Section 3.3.

c. Any Net Revenues accruing through the date of termination shall be distributed in accordance with Article VI.

d. Upon termination of this Agreement for any reason, Manager shall promptly deliver the following to the Corporation or the Corporation's appointed agent:

(i) A final accounting, reflecting the balance of income and expenses for the Enterprise as of the date of termination;

(ii) Any balance of monies of the Corporation held by Manager with respect to the Enterprise;

(iii) All written data and materials belonging to the Corporation, including all records, contracts, unpaid bills, and other papers or documents which pertain to the Enterprise; and

(iv) Assignment of all franchises, licenses, and Enterprise bank accounts not held in the name of the Corporation.

e. Upon termination of this Agreement, Manager shall be entitled to receive as its full and sole compensation in discharge of all obligations of the Corporation to Manager under this Agreement, all sums due and payable to it under this Agreement to the date of termination.

## ARTICLE IX

## CONSENTS AND APPROVALS

Section 9.1. Tribe. Where approval or consent or other action of the Tribe is required, such approval shall, unless otherwise provided herein, mean the written approval of the Tribal Council evidenced by a resolution thereof, certified by the Tribal Secretary as having been duly adopted.

Section 9.2. Corporation. Where approval or consent or other action of the Corporation is required, such approval shall, unless otherwise provided herein, mean the written approval of the Board of Directors.

Section 9.3. Manager. Where approval or consent or other action of the Manager is required, such approval shall mean the written approval of one of the executive officers of the Manager.

Section 9.4. Approvals and Consents not to be Delayed. No approval, consent or action required of the Tribe, the Corporation or the Manager hereunder shall be unreasonably withheld or delayed; provided that the foregoing does not apply where a specific provision of this Agreement allows the Tribe, the Corporation or the Manager an absolute right to deny approval or consent or withhold action.

## ARTICLE X

## DISPUTE RESOLUTION

10.4.1 General. The Tribe, the Corporation and the Manager each warrants that it will use its best efforts to negotiate an amicable resolution of any dispute between the parties hereto arising from this Agreement, whether as to the operation of the Enterprise or the respective rights and liabilities of the Tribe, the Corporation and the Manager hereunder. If the Tribe, the Corporation and the Manager are unable to negotiate an amicable resolution of a dispute within a reasonable period of time, not less than two weeks, either party may refer the matter to arbitration under this Agreement.

10.4.2. Arbitration. The Tribe, the Corporation and the Manager agree that any dispute, controversy or claim arising out of or relating to this Agreement that cannot be resolved through the negotiations conducted pursuant to Section 10.4.1 shall be settled by binding arbitration. The arbitration shall be conducted by a panel of three arbitrators, one selected by the Manager, one selected by the Corporation, and one selected by the two arbitrators, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The parties agree that binding arbitration shall be the sole remedy as to all disputes arising out of this Agreement. The arbitration shall take place in Bonners Ferry, Idaho, or such other place as the parties may agree.

10.4.3. Judicial Enforcement of Arbitration Provisions. If enforcement of a settlement or arbitration decision becomes necessary by reason of the failure of one or more parties to implement its terms voluntarily, or if either the Tribe, the Corporation or the Manager refuses to participate in arbitration as provided in Section 10.4.2, the Tribe, the Corporation and the Manager agree that a party may bring an action to compel arbitration or to confirm or enforce an arbitration award, in the United States District Court for the District of Idaho or the Idaho State Court system. An action to compel arbitration or to confirm or enforce an arbitration award may be brought in the courts of the Tribe but only in the event the courts identified in this section do not exercise jurisdiction as provided in this Article X. An action brought under this section 10.4.3 shall be governed by the Idaho Uniform Arbitration Act.

10.4.4. Limited Waiver of Sovereign Immunity. The Tribe and the Corporation expressly waive sovereign immunity from suit for the limited purpose of permitting or compelling binding arbitration as provided in this Section, or enforcing any such arbitration award, and consent to be sued, in accordance with this Section, in any of the following: (i) in the United States District Court for the

District of Idaho, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court, (ii) in the Idaho State Court system and (iii) in the courts of the Tribe but only in the event the courts identified in section 10.4.4(i) and (ii) do not exercise jurisdiction as provided in this Article X. The Tribe and Corporation also expressly waive the requirement of exhaustion of tribal remedies. By this Agreement, the Tribe and Corporation do not waive, limit or modify sovereign immunity from unconsented suit, except as set forth in this Section 10.4.4. The Tribe's and the Corporation's waiver of sovereign immunity in this Agreement only extends to disputes over the specific written rights and duties of the Tribe, the Corporation and the Manager pursuant to this Agreement. Nothing herein shall be deemed a waiver of sovereign immunity with respect to any third party.

10.4.5. Limitation Upon Enforcement. Damages awarded against the Tribe or Corporation in satisfaction of any enforcement proceedings under this Agreement, shall be awarded only from undistributed or future net revenues from the Enterprise, whether or not operated under this Agreement. Notwithstanding the foregoing, in the event that undistributed or future net revenues from the Enterprise are insufficient to pay an award, then damages may be enforced against the non-fixed assets of the Enterprise.

Damages awarded against the Tribe or the Corporation shall not constitute a lien upon or be collectable from any other income or assets of the Tribe or Corporation, except with the Tribe's or Corporation's consent. The arbitrators shall have no authority or jurisdiction to award damages to Manager in an amount in excess of any monies otherwise owed to Manager under this Agreement.

10.4.6 Attorney's Fees. In the event a party institutes any action or proceeding against another party relating to this Agreement, the unsuccessful party or parties in such action or proceeding shall reimburse the successful party or parties for its disbursements incurred in connection therewith and for its reasonable attorney's fees as fixed by the court, provided, however, that failure to follow section 10.4.2 by a party shall constitute a waiver of this Section.

## ARTICLE XI

## GENERAL PROVISIONS

Section 11.1. No Joint Venture. The parties agree that it is not their intent, and that this Agreement shall not be construed, to create a joint venture between the Tribe and the Manager; rather, the Manager shall be deemed to be an independent contractor for all purposes hereunder. Neither the Tribe nor the Manager shall have the power to bind or obligate the other except as set forth in this Agreement, except Manager shall be the agent of the Corporation in the operation of the Enterprise as set forth in this Agreement.

Section 11.2. Notice. Any notice required to be given pursuant to this Agreement shall be delivered to the appropriate party by overnight courier or by Certified Mail, return receipt requested, addressed as follows:

| | |
|---|---|
| If to the Tribe: | Kootenai Tribe of Idaho<br>P.O. Box 1269<br>Bonners Ferry, Idaho 83805<br>Attn: Tribal Chairperson |
| with copies to: | LeRoy Wilder, P.C.<br>0225 S.W. Montgomery Street #10<br>Portland, OR 97201<br><br>Gregory A. Smith<br>1918 18th Street, N.W.<br>Suite 24<br>Washington, D.C. 20009 |
| If to the Corporation: | Kootenai Tribal Development Corporation<br>P.O. Box 1269<br>Bonners Ferry, Idaho 83805<br>Attn: President/Chairman |
| If to Manager: | Hagadone Hospitality Co.<br>P.O. Box 6200<br>Coeur d'Alene, Idaho 83816<br>Attn: Mr. Jerald J. Jaeger |
| with copies to: | E. L. Miller<br>Paine, Hamblen, Coffin,<br>Brooke & Miller LLP<br>816 Sherman Avenue<br>P.O. Box E<br>Coeur d'Alene, ID 83816-0328<br><br>Kevin J. Wadzinski<br>Dorsey & Whitney LLP<br>1330 Connecticut Ave. N.W.<br>Washington, D.C. 20036 |

or to such other different address(es) as the Manager, the Corporation or the Tribe may specify in writing using the notice procedure called for in this Section 11.2. Any

such notice shall be deemed given two days following deposit in the United States mail or upon actual delivery, whichever first occurs.

Section 11.3. Authority to Execute and Perform Agreement. The Tribe, the Corporation, and the Manager represent and warrant to the others that they each have full power and authority to execute this Agreement and to be bound by and perform the terms thereof. On request, each party shall furnish the other evidence of such authority.

Section 11.4. Defense of Claims. Except for claims relating to the Tribe's status as a federally recognized Indian tribe or the trust status of the Property, the Manager, upon the approval of the Corporation, shall bring or defend any claim or legal action brought against the Enterprise, the Tribe, the Corporation, or the Manager in connection with the operation of the Enterprise. All liabilities, costs and expenses, including reasonable attorneys' fees and disbursements incurred in defending and/or settling any such claim or legal action which are not covered by insurance shall be an Operating Expense. The Manager cannot waive and nothing contained herein is a grant to the Manager of the right to waive, the Tribe's or Corporation's or the Enterprise's sovereign immunity. Any settlement of a third party claim or cause of action against the Tribe or the Enterprise shall require the approval of the Corporation and the Tribal Council. The Corporation reserves the right to designate counsel and control litigation of any character affecting or arising out of the operation of the Enterprise or the conduct of the Corporation's business affairs.

Section 11.5. Severability. Each provision of this Agreement is intended to be severable. If any term or provision hereof shall be determined by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement.

Section 11.6. Third Party Beneficiary. This Agreement is exclusively for the benefit of the parties hereto, may not be enforced by any party other than the parties to this Agreement and shall not give rise to liability to any third party other than the authorized successors and assigns of the parties hereto as such are authorized by this Agreement.

Section 11.7. 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 Tribe or the state of Idaho, then in such event said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

Section 11.8. Permitted Assignment. The Manager shall have the right to assign its rights and its obligations under this Agreement to a successor or assignee,

or subcontract its obligations under this Agreement, but only with the prior approval of the Tribal Council and the approval of the Chairman of the NIGC or his authorized representative after a complete background investigation of the proposed successor or assignee.

The Tribe and Corporation shall, subject to approval by the Secretary of the Interior or the Chairman of the NIGC or his authorized representative, where required, have the right to assign this Agreement and the assets of the Enterprise to an instrumentality of the Tribe or to another corporation wholly-owned by the Tribe organized to conduct the business of the Enterprise for the Tribe that assumes all of the Tribe's obligations hereunder. The Manager's consent shall not be required for any such assignment, and no such assignment shall prejudice the rights of the Manager under this Agreement.

Section 11.9. Time is of the Essence. Time is of the essence in the performance of this Agreement.

Section 11.10. Confidential and Proprietary Information.

11.10.1. Confidential Information. All parties agree that any information received concerning the other party during the performance of this Agreement, regarding the parties' organization, financial matters, marketing plans, or other information of a proprietary nature ("Confidential Information"), will be treated by the parties in full confidence and will not be revealed to any other person, firm or organization except as required to allow the parties to perform their respective covenants and obligations hereunder, or in response to legal process or appropriate and necessary inquiry of a government agency having jurisdiction over the Tribe's gaming operation. This provision shall survive the termination of this Agreement for a period of two years.

Section 11.11. Patron Dispute Resolution. All patron disputes shall be resolved according to the Procedures attached as Exhibit C (attached hereto).

Section 11.12. 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.

Section 11.13. Entire Agreement. This Agreement, including the Exhibits referred to herein, constitutes the entire understanding and agreement of the parties hereto and supersedes all other prior agreements and understandings, written or oral, between the parties.

Section 11.14. 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, the BIA, the NIGC, the office of the Field Solicitor, the Compact, 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 Tribe, the Corporation or the Manager under this Agreement or any other agreement or document related hereto.

Section 11.15. Governing Law. This Agreement is entered into on the Kootenai Indian Reservation in the State of Idaho and shall be governed by the laws of the Kootenai Tribe, Federal law and to the extent said laws are silent, by the laws of the State of Idaho.

Section 11.16. Indemnity by the Corporation and Tribe. To the extent that either the Corporation or Tribe is found at fault and liable herefor, the Corporation or Tribe hereby agrees to indemnify, defend, and hold harmless Manager, its officers, directors and employees, from and against any and all third-party (including Enterprise Employee) claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including reasonable attorney's fees), arising directly or indirectly, in whole or in part, out of any matter related to the Enterprise, the conduct of the business of the Corporation or Tribe or any action taken by Manager within the scope of its duties or authority thereunder, excluding only such of the foregoing as result from the negligence or willful act of Manager, its officers, directors, agents and employees, and Enterprise Employees under the Manager's supervision not otherwise covered by insurance. The provisions of this Section shall survive termination of this Agreement.

Section 11.17. Indemnity by the Manager. To the extent the Manager is found at fault and liable herefor, the Manager hereby agrees to indemnify, defend, and hold harmless the Corporation and Tribe, its officers, directors and employees, from and against any and all third-party (including Enterprise Employee) claims, demands, losses, liabilities, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including reasonable attorney's fees), arising directly or indirectly, in whole or in part, out of any matter related to the Enterprise, the conduct of the business of the Corporation or Tribe or any action taken by Manager within the scope of its duties or authority thereunder, excluding only such of the foregoing as result from the negligence or willful act of the Corporation or Tribe, its officers, directors, agents and employees, and Enterprise Employees under the Corporations or Tribe's supervision not otherwise covered by insurance. The provisions of this Section shall survive termination of this Agreement.

Section 11.18. Covenant Not to Compete. Throughout the term of this Agreement, subject to the other parties' full performance of their obligations hereunder and not being in a state of material breach, the parties agree that they shall not, directly or indirectly, whether as an owner, stockholder, principal, agent, employee, or independent contractor, engage or participate in, or be a stockholder or holder of any other security of any nature whatsoever of, or a lender to, or an owner of any debt or portion of a debt of, or furnish any financial aid or any other support or assistance of any nature whatsoever to, any business, enterprise or undertaking which is in any manner or degree competitive with the use of the Enterprise, if such business, enterprise or undertaking is located or conducted in whole or in part from premises located within Boundary County, Idaho, or within a driving distance of twenty-five miles south of Bonners Ferry; unless the other parties shall in each case give their prior written consent which consent or consents may be withheld by the parties in their sole and absolute discretion. For purposes of this Agreement, transportation of persons and equipment to the Schweitzer ski area shall not be deemed a violation of this Section.

Section 11.19 Ownership Changes. Changes in the ownership of the Manager resulting in a change in the control of the Manager shall require the Corporation's consent, but other changes in the ownership of Manager not resulting in a change of control of Manager shall not require the Corporation's consent. For this purpose, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the Manager, whether through the ownership of voting securities, by contract or otherwise.

Section 11.20. No Transfer of Interest in Land. Nothing contained in this Agreement shall be construed as providing for the transfer or, in any other manner, conveyance of any interest in land or any real property.

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

THE KOOTENAI TRIBE OF IDAHO
P.O. Box 1269
Bonners Ferry, Idaho 83805

By: _____
Gary Aitken, Sr.
Tribal Chairperson

THE KOOTENAI TRIBAL
DEVELOPMENT CORPORATION
P.O. Box 1269
Bonners Ferry, Idaho 83805

By: _____

HAGADONE HOSPITALITY
COMPANY, an Idaho copartnership
P.O. Box 6200
Coeur d'Alene, Idaho 83816

By: _____
Jerald J. Jaeger
President

Approved pursuant to 25 U.S.C. § 2711
and 25 U.S.C. § 81

NATIONAL INDIAN GAMING
COMMISSION

Dated: Feb. 10, 1998.

By: _____
Its Chairman