AMENDED AND RESTATED MANAGEMENT AGREEMENT

BETWEEN

THE ST. REGIS MOHAWK TRIBE

and

PRESIDENT R.C.–ST. REGIS MANAGEMENT COMPANY

AMENDED AND RESTATED
MANAGEMENT AGREEMENT

THIS AMENDED AND RESTATED MANAGEMENT AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 1994, by and between THE ST. REGIS MOHAWK TRIBE, a federally recognized Indian tribe, in its capacity as a sovereign government and as a proprietor, ("TRIBE"), and PRESIDENT R.C.--ST. REGIS MANAGEMENT COMPANY, a New York Partnership, ("MANAGER").

RECITALS

WHEREAS, TRIBE is a federally recognized Indian tribe pursuant to the Treaty with the Seven Nations of Canada, 7 Stat. 55 (May 31, 1796), possessing sovereign power over the St. Regis Mohawk reservation;

WHEREAS, TRIBE desires to engage in Class II and Class III gaming as authorized by the Indian Gaming Regulatory Act of 1988, 25 U.S.C. §§ 2701-2721 (hereafter "IGRA") and the regulations promulgated thereunder;

WHEREAS, TRIBE requires the financial assistance, technical assistance and expertise to develop, construct, manage, operate and maintain Class II and Class III gaming facilities on lands subject to the jurisdiction of TRIBE so as to increase TRIBE'S revenues and to enhance TRIBE'S economic self-sufficiency and self-government;

WHEREAS, MANAGER is experienced in the financing, development, construction, operation and maintenance of gaming facilities and operations;

WHEREAS, TRIBE desires to engage MANAGER to finance, construct, improve, manage, operate and maintain Class II and Class III gaming facilities as described below on an exclusive basis,

except as set forth in Section 2.7 herein in conformance with the terms and conditions of this Agreement;

WHEREAS, TRIBE, in the exercise of its governmental powers, has authorized the conduct of gaming pursuant to IGRA and the Compact as defined below, under the auspices of TRIBE; and

WHEREAS, MANAGER desires to perform the above-described functions as exclusive manager (without a proprietary interest) of TRIBE for such purposes.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

SECTION 1. DEFINITIONS

In addition to any other terms and phrases defined herein, the following terms used in this Agreement shall have the definitions set forth below:

1.1 CAPITAL ITEMS. "Capital Items" means any property, plant, or equipment necessary and proper for the operation of the Tribal Gaming Operatio

1.2 CHAIRMAN. "Chairman" means the Chairman of the National Indian Gaming Commission.

1.3 CLASS II GAMING. "Class II Gaming" means games of chance which meet the definition of "Class II gaming" contained in IGRA, specifically 25 U.S.C. § 2703(7), including without limitation the games defined as Class II gaming in 25 C.F.R § 502.3.

1.4 CLASS III GAMING. "Class III Gaming" means games of chance which meet the definition of "Class III gaming" contained in IGRA, specifically 25 U.S.C. § 2703(8), including without limitation the games defined as Class III gaming in 25 C.F.R. § 502.4.

1.5 COMMISSION. "Commission" as used herein refers to the National Indian Gaming Commission established by IGRA.

1.6 COMPACT. The "Compact" shall mean the St. Regis Mohawk--State of New York Gaming Compact negotiated by and between TRIBE and the State of New York.

1.7 CONCESSIONS. "Concessions" means any restaurant, snack bar, stand, facility, station, area or any and all other non-gaming activities operated as part of the Tribal Gaming Operation having the exclusive authority to sell souvenirs, soft drinks, candies, tobacco products, alcoholic beverages, foods and related items or to provide non-gaming services on the Site.

1.8 DEVELOPMENT EXPENSES. "Development Expenses" shall have the meaning set forth in Section 6.1(B) herein.

1.9 EFFECTIVE DATE. "Effective Date" means the date of the approval of this Agreement by the Chairman of the Commission.

1.10 ELECTED OFFICIAL. "Elected Official of TRIBE" for purposes of this Agreement, shall mean all officials of TRIBE elected by the tribal membership, or appointed or selected by the Tribal Council.

1.11 EXECUTIVE DIRECTOR. "Executive Director" means TRIBE'S representative specifically identified by the Tribal Gaming Commission to MANAGER as the individual responsible for monitoring the operations of the Tribal Gaming Operation under the supervision

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of the Tribal Gaming Commission and with whom MANAGER will ordinarily officially deal with regard to the operations of the Tribal Gaming Operation.

1.12 FACILITY. "Facility" shall mean the facility as described in Sections 4.1 and 6.2 herein in which Class II and Class III Gaming will be conducted pursuant to this Agreement.

1.13 GAMING. "Gaming" means all forms of Class II gaming which are legal in the State of New York and all forms of Class III gaming which TRIBE has or will have authority to conduct pursuant to the Compact, any amendments or modifications thereof or any other compacts or agreements which may be negotiated between TRIBE and the State of New York under IGRA.

1.14 GAMING NET REVENUES. "Gaming Net Revenues" means

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. Gaming Net Revenues shall be computed in conformance with generally accepted accounting principles (GAAP).

1.15 GAMING NET REVENUES (CASH FLOW). "Gaming Net Revenues

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shall be computed

in conformance with generally accepted accounting principles (GAAP).

1.16 GAMING NET REVENUES (GAAP/ACCRUAL). "Gaming Net Revenues

shall be computed in conformance with generally accepted accounting principles (GAAP). TRIBE and MANAGER hereby stipulate that "Gaming Net Revenues (GAAP/Accrual)" shall have the same meaning as "net revenues" as defined in 25 C.F.R. § 502.16.

1.17 GENERAL MANAGER. The "General Manager" shall be that person hired as an employee of Tribal Gaming Operation pursuant to Section 7.1(A) herein to be responsible for the day-to-day operations of the Tribal Gaming Operation.

1.18 KEY EMPLOYEE. "Key Employee" means:

(A) A person employed by the Tribal Gaming Operation who performs one or more of the following functions:

(1) Bingo callers, floor supervisors, etc.;

(2) Counting room supervisor;

(3) Chief of security;

(4) Custodian of gaming supplies or cash;

(5) Floor manager;

(6) Pit boss; and

(7) Custodian of gambling devices including persons with access to cash and accounting records within such devices;

(B) If not otherwise included, any other person employed by the Tribal Gaming Operation whose total cash compensation

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or

(C) If not otherwise included, the four most highly compensated persons employed by the Tribal Gaming Operation.

1.19 MANAGEMENT FEES. "Management Fees" means the total fees paid to MANAGER,

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1.20 MINI-GAMES. "Mini-Games" means Class II gaming commonly known as bingo, including pulltabs and floor games, played at a rapid pace at intermission and immediately preceding or following the Session.

1.21 MONTHLY BASE PAYMENT. "Monthly Base Payment" means the

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1.22 NON-GAMING NET REVENUES. "Non-Gaming Net Revenues" means

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Fees. Non-Gaming Net Revenues shall be computed in conformance with generally accepted accounting principles (GAAP).

1.23 OPERATING EQUIPMENT. "Operating Equipment" means any equipment necessary and proper for the operation of the Tribal Gaming Operation

1.24 OPERATING EXPENSES. "Operating Expenses" means

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1.25 OPERATING EXPENSES (CASH FLOW). "Operating Expenses (Cash Flow)" means

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1.26 **<u>OPERATING EXPENSES (GAAP/ACCRUAL)</u>**. "Operating Expenses (GAAP/Accrual)" means all

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1.27 OPERATION. "Operation" means any business of TRIBE which operates Class II and Class III Gaming and related non-gaming operations including without limitation all hotel, resort, tourist, sports, concessions and gaming support operations.

1.28 ORDINANCE. "Ordinance" means the laws passed by TRIBE to regulate Class II and Class III Gaming which are attached hereto as Exhibit "A."

1.29 PERSONS HAVING A DIRECT OR INDIRECT FINANCIAL INTEREST IN THIS AGREEMENT. "Persons having a direct or indirect financial interest in this Agreement" means any partner of MANAGER.

1.30 PRIMARY MANAGEMENT OFFICIAL. "Primary Management Official" means:

(A) The Person having management responsibility for this Agreement, including the General Manager;

(B) Any person who has authority:

(1) To hire and fire employees; or

(2) To set up working policy for the gaming operations; or

(C) The chief financial officer or other person who has financial management responsibility.

1.31 PROJECT. "Project" means the process of planning, developing, constructing and equipping any Facility or Operation.

1.32 RELATIVE. "Relative" means an individual who is related as a father, mother, son, daughter, brother, sister, husband or wife.

1.33 SECRETARY. "Secretary" means the Secretary of the Interior or his designee.

1.34 SESSION. "Session" means a series of bingo games conducted during which time the purchaser of a set of bingo cards is an eligible participant, including any series of single card bingo games, commonly referred to as "Mini-bingo", conducted at intermission and immediately preceding or following the Session.

1.35 SITE. "Site" shall mean that tract of land within the external boundaries of the St. Regis Mohawk Reservation upon which the Facility will be located and which location shall be mutually agreed to by MANAGER and TRIBE.

1.36 SUBCONTRACT. "Subcontract" means any contractual arrangement between MANAGER and a third party wherein the third party is to provide non-gaming services related to the operation of the Tribal Gaming Operation.

1.37 TRIBAL COUNCIL. "Tribal Council" means the Tribal Council Chiefs of TRIBE, which is the governing body of TRIBE as recognized by the United States and the State of New York.

1.38 TRIBAL GAMING COMMISSION. "Tribal Gaming Commission" means the commission established by the Tribal Council pursuant to the Ordinance to regulate Class II and Class III Gaming within the jurisdiction of TRIBE.

1.39 TRIBAL GAMING OPERATION. "Tribal Gaming Operation" means the Class II and Class III gaming enterprise, including without limitation Concessions and any and all gaming and non-gaming related activities, which will be owned by TRIBE and operated by MANAGER pursuant to the terms and conditions of this Agreement.

SECTION 2. PARTIES

2.1 TRIBE. TRIBE is THE ST. REGIS MOHAWK TRIBE, a federally recognized Indian tribe, in its capacity as a sovereign government and as a proprietor. TRIBE, in the exercise of its governmental powers, authorizes and regulates Class II and Class III Gaming in accordance with the Ordinance, Compact and IGRA.

2.2 MANAGER. MANAGER is PRESIDENT R.C.--ST. REGIS MANAGEMENT COMPANY, a New York Partnership.

2.3 SOLE PROPRIETARY INTEREST BY TRIBE. TRIBE shall have sole proprietary interest and responsibility for conduct of any gaming activity. Regardless of the fact that the terms for disbursement of profits are on a percentage basis, TRIBE and MANAGER are not in partnership.

2.4 COMMUNICATIONS BETWEEN PARTIES. The parties hereto agree that full and frequent communications between MANAGER and TRIBE are essential to the proper operation of the Tribal Gaming Operation. Therefore, MANAGER and the Executive Director shall meet as often as is necessary, but not less frequently than monthly during the term of this Agreement, to discuss matters of mutual concern and interest. MANAGER shall communicate with TRIBE exclusively through the Executive Director in order to facilitate operations hereunder and avoid the appearance of any interference in TRIBE'S government or affairs, with the following exceptions:

(A) when the Tribal Council and/or the Tribal Gaming Commission requests in writing such communications in order to perform its functions as set forth by the Ordinance or Compact;

(B) when communications by attorneys for the Tribal Gaming Operation, TRIBE and MANAGER are necessary;

(C) when TRIBE authorizes communications with another agent of TRIBE; or

(D) when the Tribal Council and/or the Tribal Gaming Commission requests in writing that a principal or an agent of MANAGER report directly to the Tribal Council or appear before that body for a specified purpose.

2.5 **TRIBAL APPROVAL**. Any approval, consent or authorization of TRIBE required by any term or condition of this Agreement herein shall be accomplished by either of the following two methods:

(A) delivery to MANAGER of a resolution or other action duly enacted by the Tribal Council setting forth the terms of such approval or authorization; or

(B) delivery to MANAGER of a written approval signed by a person to whom the Tribal Council has delegated such approval authority, along with the resolution or other action of the Tribal Council authorizing such delegation.

2.6 **PRIOR AGREEMENTS BETWEEN THE PARTIES**. This Agreement is entered into pursuant to that certain Memorandum of Understanding, dated August 5, 1993, by and between TRIBE and MANAGER (the "Memorandum of Understanding"), and shall supersede (i) the Memorandum of Understanding, (ii) that certain Management Agreement dated October 26, 1993, between TRIBE and MANAGER, and (iii) that certain Addendum to Management Agreement dated December 15, 1993,

between TRIBE and MANAGER, upon the Effective Date of this Agreement.

2.7 **OTHER AGREEMENTS**. During the term of this Agreement and any and all extensions thereof, neither TRIBE nor any agent or

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SECTION 3. PURPOSE; COVENANTS AND AGREEMENTS OF TRIBE

3.1 OPERATION OF CLASS II AND CLASS III TRIBAL GAMING OPERATION; SITE. The purpose of this Agreement is to provide for the management and operation of a Class II and Class III tribal gaming operation, known as "St. Regis--President Casino," or such other name as may be agreed to in writing by MANAGER and TRIBE, to be located on the Site. The Tribal Gaming Operation shall operate on the Site during the term of this Agreement. Upon the purchase by TRIBE of the land constituting the Site

TRIBE shall, if necessary for the development of the Tribal Gaming Operation, immediately commence and use its best efforts to pursue, with the cooperation of MANAGER, the affirmation or recognition of such land as trust land by the United States for the benefit of TRIBE pursuant to 25 C.F.R. Part 151, for the purpose of Class II and/or Class III Gaming.

3.2 OPERATIONS TO COMPLY WITH FEDERAL LAW, THE ORDINANCE AND THE COMPACT. TRIBE shall, in the operation of the Tribal Gaming Operation, promote the public order, peace, safety and welfare of all persons coming within the jurisdiction of TRIBE to provide a safe and wholesome means of recreational activity in a community setting and to provide a source of revenue for the operations, programs and departments of the government of TRIBE. This Agreement shall be subject to the requirements of IGRA, the Ordinance and the Compact.

3.3 COMPACT. TRIBE shall use its best efforts to cause the execution of the Compact for Class III Gaming with the State of New

York by the Governor of the State of New York and a majority of the Tribal Council Chiefs of the Tribe and shall use its best efforts to cause the Compact to be approved by the Secretary pursuant to 25 U.S.C. § 2710(d)(8).

3.4 **ORDINANCE**. TRIBE shall use its best efforts to cause the Ordinance to be approved by the Chairman of the Commission. MANAGER shall have the reasonable opportunity to review any and all licensing statutes and regulations, and any and all amendments thereto, and to provide comments to TRIBE prior to the passage thereof. TRIBE and MANAGER agree that the adoption of licensing statutes and regulations shall be at the discretion of TRIBE.

3.5 **LICENSING FEE, TAXES AND IMPOSITIONS ON MANAGER**. Notwithstanding any other provision contained herein, TRIBE hereby

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3.6 LICENSING FEES, TAXES AND IMPOSITIONS ON EMPLOYEES. Notwithstanding any other provision contained herein, TRIBE hereby

SECTION 4. SCOPE OF TRIBAL GAMING OPERATION

4.1 PHASE I AND PHASE II. TRIBE and MANAGER hereby covenant and agree that Phase I of the Facility shall contain a minimum of 75,000 square feet of space which will include gaming operations, sanitary facilities, office space, Concessions and "back-of-house"

support areas as well as provide sufficient parking on Site. The

Phase II of the Facility shall consist of the expansion of the Facility to contain a minimum of 100,000 square feet of space (inclusive of the initial 75,000 square feet), which may include gaming operations, sanitary facilities, office space, Concessions and back-of-house support areas. Parking sufficient for Phase II of the Facility shall also be provided on or appurtenant to the Site.

Except as provided in Section 4.2 herein

then the terms and conditions of this Agreement shall in all respects control the construction, development, operation, maintenance and improvement of Phase II of the Facility. In conjunction with Phase II expansion, TRIBE and MANAGER may mutually agree upon modifications to this Agreement pursuant to 25 C.F.R. Part 535.

4.2 TRIBAL DEMAND. od

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MANAGER and TRIBE shall as soon as possible commence negotiations of any modifications of this Agreement pursuant to 25 C.F.R. Part 535, with regard to Phase II of the Facility and any other economic development contemplated by the parties; provided, however,

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then the terms and conditions of this Agreement shall in all respects control the construction, development, operation, maintenance and improvement of Phase II of the Facility.

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4.3 **ECONOMIC DEVELOPMENT AGREEMENT**. In conjunction with any Phase II expansion of the Facility, MANAGER shall have the exclusive right, but not the obligation, subject to Section 2.7 herein, to negotiate an "Economic Development Agreement" with TRIBE which shall cover various non-gaming aspects (including without limitation hotel, restaurant and resort facilities) of any Operation contemplated by TRIBE and MANAGER located on the Site or on other lands subject to TRIBE'S jurisdiction. The total

4.4 FUTURE COMPACTS; GAMING ACTIVITIES. In the event that TRIBE and the State of New York enter into any amendments of or modifications of any sort to the Compact, or any other compact or agreement permitting the operation of any additional gaming activities not included in the Compact (including without limitation slot machines and electronic gaming devices) on lands subject to the jurisdiction of TRIBE, then MANAGER shall have the right to develop, operate and maintain such gaming activities pursuant to the terms and conditions of this Agreement, and the Ordinance and Compact then in effect.

SECTION 5. MANAGER'S TERM AND SCOPE OF AUTHORITY

5.1 TERM. TRIBE hereby retains and engages MANAGER for a [illegible] commencing on the date the Tribal Gaming Operation is open for business to the public, to manage, administer and operate all Class II and Class III Gaming of the Tribal Gaming Operation. TRIBE and MANAGER shall jointly certify in writing the date the Tribal Gaming Operation is open for business, and such writing shall by reference become a part of this Agreement.

5.2 EXPIRATION OF TERM. [illegible] to the expiration of the term of this Agreement, TRIBE shall provide MANAGER with written notice duly authorized by the Tribal Council as to whether TRIBE plans to assume full or partial management responsibility

over the Tribal Gaming Operation utilizing a salaried manager, or whether TRIBE plans to contract for the management of the Tribal Gaming Operation, with MANAGER to receive a percentage of the Gaming Net Revenues and/or the Non-Gaming Net Revenues. If TRIBE plans to contract for full or partial management of the Tribal Gaming Operation on the basis of a percentage of the Gaming Net Revenues and/or the Non-Gaming Net Revenues, MANAGER shall have the right, but not the obligation, to submit its proposal to TRIBE.

5.3 MANAGER'S RESPONSIBILITIES. All of the day-to-day operations of the Tribal Gaming Operation shall be under the exclusive control of MANAGER, subject to all requirements of IGRA, the Ordinance and the Compact. TRIBE hereby grants and delegates to MANAGER the necessary power and authority to act in order to fulfill its responsibilities pursuant to this Agreement, including the authority to construct, manage, administer, operate, maintain and improve the gaming facilities for the conduct of Class II and Class III Gaming on the Site, as well as such other activities as are reasonably related thereto. MANAGER hereby accepts such obligations. MANAGER is hereby assigned the specific responsibility to establish operating days and hours and shall have the right to operate the Tribal Gaming Operation on the Site twenty-four (24) hours per day on every day of the year. MANAGER shall use reasonable measures for the orderly management and operation of the Tribal Gaming Operation, including cleaning, and such repair and maintenance work as is necessary; provided that all maintenance expenses shall be in accordance with MANAGER'S annual operating budget. As a further description of MANAGER'S duties and

obligations hereunder and not in limitation of the same, MANAGER shall have the duty and responsibility to:

(A) collect, receive, and receipt, for all gross sales, revenues, and/or rentals that become due and payable and collected in connection with and/or arising from the operation and management of the Tribal Gaming Operation, and shall deduct from such gross amounts expenses hereinafter provided; and

(B) pay all sums that MANAGER deems necessary or proper for the maintenance and operation of the building and facilities, including water, insurance, heat, light, payrolls, repairs, and the like; pay all charges which become due and payable on Tribal Gaming Operation pursuant to the terms and conditions of this Agreement, or as may be determined by MANAGER; and pay such amounts as may be necessary or appropriate for Capital Items to the Tribal Gaming Operation pursuant to this Agreement.

SECTION 6. LAND CONSTRUCTION, FINANCING AND USE OF GAMING FACILITY

6.1 LAND, INITIAL CAPITAL FOR CONSTRUCTION AND INITIAL EXPENSES.

(A) **Real Property Ownership.** TRIBE represents that within thirty (30) days after the Effective Date of this Agreement, it shall become the legal or beneficial owner of the land comprising the Site. TRIBE shall fully cooperate in obtaining all

permits and approvals needed to construct the gaming facilities on the Site and to operate the gaming activities thereon. TRIBE represents and warrants that the Site is "Indian land" within the meaning of 25 U.S.C. § 2703(4).

(B) **Development Expenses**.

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6.2 <u>CONSTRUCTION OF FACILITIES</u>. TRIBE hereby grants MANAGER the authority to supervise the construction of all the development, improvements, and related activities with regard to the Tribal Gaming Operation as set forth below:

(A) <u>Phase I Facility</u>. Within thirty (30) days after the Effective Date, MANAGER shall undertake all preliminary steps necessary to construct Phase I of the Facility, including selection of an architect and selection of a general contractor. The Facility shall contain a minimum of 75,000 square feet of space to include gaming operations, sanitary facilities, office space and Concessions and back-of-house support areas, as well as provide sufficient parking on the Site.

(B) <u>Standards</u>. The design, construction and maintenance of the Facility and Site shall meet or

exceed the minimum standards set by the TRIBE'S building code or the Compact or which would be imposed on such facility by existing state or federal statutes or regulations which would be applicable if such facilities were located outside of the territorial boundaries of TRIBE, although those requirements would not otherwise apply within TRIBE'S territorial boundaries; provided further, that nothing in this Section shall grant any jurisdiction over the Site or its development and management to the State of New York, or any political subdivision thereof.

(C) National Environmental Policy Act. If applicable, MANAGER will supply the Commission with all information necessary for the Commission to comply with the regulations of the Commission issued pursuant to the National Environmental Policy Act.

6.3 ARCHITECT. The architect shall be chosen by MANAGER and shall be approved by TRIBE, such approval not to be unreasonably withheld. At the direction of MANAGER, the architect shall have the responsibility to design the Facility, with such design to be subject to the approval of TRIBE, which approval shall not be unreasonably withheld. Further, at the direction of MANAGER, the architect shall supervise the completion of all the construction, development, improvements and related activities undertaken pursuant to the terms and conditions of the contract with the general contractor as described below.

6.4 <u>GENERAL CONTRACTOR</u>. The general contractor shall be responsible for providing all materials, equipment and labor to construct and initially equip the Facility, as necessary, including site development, and shall supervise the construction of such facilities.

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MANAGER'S contract with the general contractor shall provide as follows: (i) construction of the Facility shall commence within ninety (90) days following the Effective Date; (ii) the general contractor shall exert his best efforts to complete construction within six (6) months of the commencement of construction; (iii) the general contractor shall warrant the construction to be free of defects and unworkmanlike labor for a period of one year subsequent to the date the architect certifies the facility is complete. MANAGER'S contract with the general contractor shall contain such other provisions for the protection of the parties to this Agreement as deemed appropriate by MANAGER. Preference in employment of qualified persons by the general contractor shall be extended in the following order of priority: <u>First</u>, members of TRIBE; <u>second</u>, children and spouses of members of TRIBE; and <u>third</u>, members of the Canadian St. Regis Mohawk Indian Tribe.

6.5 <u>SUPERVISION OF CONSTRUCTION</u>. TRIBE may employ an inspector to observe the construction of the Facility, and MANAGER shall allow the inspector full access to the construction site and shall allow the inspector to inspect all construction materials and financial records relating to construction costs.

6.6 <u>NO LIENS</u>. MANAGER shall keep the Facility and the Site free and clear of all mechanics' and other liens resulting from the construction of the Facility, which shall at all times remain the property of TRIBE. If such lien is claimed or filed, it shall be the duty of MANAGER, within thirty (30) days after having been given written notice of such a claim having been filed, to cause the property to be discharged from such claim,

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6.7 <u>FIRE AND SAFETY</u>. MANAGER is hereby assigned the specific responsibility to provide fire protection services. The Facility shall be constructed and maintained in compliance with all fire and safety statutes, ordinances, and regulations which would be applicable if the Facility were located outside the exterior boundaries of the territory of TRIBE, although those requirements would not otherwise apply on that territory; provided, that nothing in this Section shall grant any jurisdiction to the State of New York or any political subdivision thereof over the Tribal Gaming Operation site. Further, the construction and maintenance shall be in compliance with and subject to the standards set forth in Section 12.A. of the Compact.

6.8 <u>OWNERSHIP OF PROPERTY</u>. Title to the Site and the Facility, as well as furniture, fixtures and equipment acquired

pursuant to Section 6.1 herein or purchased as an Operating Expense of the Tribal Gaming Operation shall vest solely in TRIBE. Prior to opening of the Facility, a complete physical inventory of all separate property of TRIBE and MANAGER shall be taken by both parties and initial acceptance and approval shall be given by both parties. All property acquired after the opening of the Facility shall be recorded on the respective inventory records of each party when acquired. An annual inventory shall be conducted for all property located on the premises of the Facility. Any furniture, fixtures or equipment purchased by MANAGER

and which are not permanently affixed to the Facility shall be the property of MANAGER and shall be removable by MANAGER upon expiration or termination of this Agreement, provided that at no time during the term of this Agreement shall MANAGER

6.9 **<u>USE OF FACILITY</u>.** MANAGER shall not conduct or allow to be conducted at the Facility any illegal activities or any activities not allowed by TRIBE under the Ordinance or the Compact, including the use or possession of illegal drugs or other substances or firearms. MANAGER shall maintain an orderly, clean, and healthy atmosphere.

6.10 **<u>NON-INTERFERENCE WITH MANAGER'S USE</u>.** During the term of this Agreement, TRIBE covenants and agrees that any amendments to the Ordinance shall be a legitimate effort to ensure that Gaming is

conducted in a manner that adequately protects the environment, the public health and safety, and the integrity of the Tribal Gaming Operation. TRIBE covenants and agrees that it shall not adopt any amendments to the Ordinance, or revoke or modify the Ordinance in any manner, which will prejudice MANAGER'S rights under this Agreement ar any amendments hereof. TRIBE further covenants and agrees not to enact any laws or regulations of any sort which would make MANAGER'S operations authorized in this Agreement herein illegal, and agrees not to enact any laws or regulations of any sort or take any other action which would unduly interfere with, obstruct, prevent, delay or otherwise impede MANAGER from conducting its operation and management duties under this Agreement. During the term of this Agreement, TRIBE agrees that MANAGER shall have lawful access to the Site at all times.

SECTION 7. GENERAL OPERATIONS

7.1 PERSONNEL AND TRAINING. MANAGER is hereby assigned the specific responsibility to establish and administer employment practices. Further, TRIBE and MANAGER hereto covenant and agree that MANAGER shall have the responsibility on behalf of TRIBE, to employ, direct, control, and discharge all personnel performing regular services in or on the Site in connection with the construction, administration, maintenance, operation and management of the Tribal Gaming Operation, and any activity connected with the Tribal Gaming Operation, as follows:

(A) General Manager. MANAGER shall select a General Manager who shall be an employee of the Tribal Gaming Operation,

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In the event TRIBE, at any time, believes sufficient reason exists for the removal of the General Manager, TRIBE may notify MANAGER, in writing, stating with reasonable specificity the reasons why TRIBE requests removal of the General Manager, and requesting MANAGER to show cause why the General Manager should not be removed. The notification should set forth such reasons with reasonable specificity. MANAGER shall respond in ten (10) days of such notification by either removing the General Manager or showing cause, in writing with similar specificity, why the General Manager should not be removed. If the matter is not resolved to the satisfaction of both parties, it should be considered a dispute, and be resolved in accordance with Section 10.8 herein.

The reasons cited by TRIBE for the removal of the General Manager shall include without limitation the filing of criminal charges against the General Manager; dishonesty by the General Manager; failure of the General Manager to follow the requirements of this Agreement, the Ordinance or the Compact; inattention to business; failure of the General Manager to operate the Tribal Gaming

Operation in a manner generating sufficient Gaming Net Revenues and Non-Gaming Net Revenues to pay Operating Expenses and TRIBE'S guaranteed monthly minimum payment; or General Manager's physical inability to perform his job functions. Subject to compliance with the Compact, and in particular Appendix A thereof, such reasons shall not include matters which may involve controversy over the classification of gaming activities on the premises.

(B) General Hiring Authority. All employees shall be employees of the Tribal Gaming Operation and shall be listed under the Tribal Gaming Operation's federal employee identification number. It is hereby understood and agreed that MANAGER shall have the responsibility, on behalf of the Tribal Gaming Operation, to employ, direct, control and discharge all personnel performing regular services in and on the Site in connection with maintenance, operation, and management of the Tribal Gaming Operation, subject to the requirements of IGRA and the Compact. MANAGER shall indemnify and hold TRIBE harmless from any and all liability associated with the payment of federal and state withholding taxes for employees of the Tribal Gaming Operation.

(C) Employee Background Checks. Background checks shall be conducted by TRIBE on each employee and job applicant pursuant to the terms of IGRA, the Ordinance and the Compact. If feasible, such check shall be conducted in advance of employment. Nonetheless, nothing herein shall prevent the hiring of a qualified applicant under a temporary license as provided in the Compact at Section 5 pending such background check if immediate personnel requirements demand the same. MANAGER shall cooperate with TRIBE to expedite such checks.

(D) Hiring Preference; Reports. Preference in employment of qualified persons shall be extended in the following order of priority: First, members of TRIBE; second, children and spouses of members of TRIBE; and third, members of the Canadian St. Regis Mohawk Indian Tribe; provided, that in no instance shall an Elected Official of TRIBE be hired or otherwise employed by MANAGER as an employee of the Tribal Gaming Operation. MANAGER shall provide the Tribal Gaming Commission annually, commencing with the first anniversary date of this Agreement, with a report showing the following information for the preceding twelve month period: total number of employees who worked that year, number of employees in each of the preference categories who worked that year, number

of employees in the preference categories who worked in middle or upper management, number of employees hired that year, number of employees in each of the preference categories hired that year.

(E) Employee Recruitment Plan. Throughout the term of this Agreement, MANAGER shall make active efforts to recruit, train and employ members of TRIBE, their spouses and their children, and to place such persons into middle and upper level management positions, provided that such recruitment efforts

MANAGER shall develop and present a written plan for recruitment to the Tribal Council and the Tribal Gaming Commission. Such recruitment plan shall require MANAGER to make continuing active efforts to recruit, train and employ members of TRIBE, their spouses and their children during the entire term of this Agreement.

(F) Recruitment Training. As a recruitment measure, MANAGER shall hold employee training sessions for members of TRIBE, their children and their spouses prior to the commencement of Gaming operations and shall note such training on the trainees' applications for employment. MANAGER shall notify TRIBE

in advance of all employee training to be given after commencement of operations by the Tribal Gaming Operation, and shall permit any member of TRIBE, his spouse or his children who desires (but who is not ineligible for employment pursuant to Section 7.1(D) herein) employment at the Tribal Gaming Operation to attend employee training and to have the same noted on his employment application. All training required herein sha

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(G) **<u>Employee Training</u>.** **MANAGER shall provide initial training and periodic regular training for all Tribal Gaming Operation employees in compliance with the Compact.**

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provided that TRIBE shall make reasonable efforts to provide to the

Tribal Gaming Operation any job training services or job training funding which it may have available for use in recruitment and training of Tribal Gaming Operation employees.

(H) Bonds for Employees in Positions of Trust. MANAGER may, from time to time, designate as positions of trust certain Tribal Gaming Operation personnel positions. Upon MANAGER'S designation of a personnel position as one of trust, MANAGER shall require the person holding such position to obtain a bond to assure the trust. The nature and amount of such bond shall be within the discretion of MANAGER and may, from time to time, be changed in nature and/or amount.

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(I) Hiring Preference--Vendors. Preference in employment of qualified, licensed vendors shall be extended in the following order of priority: First, members of TRIBE; second, children and spouses of members of TRIBE; and third, members of the Canadian St. Regis Mohawk Indian Tribe; provided, that in no instance shall an Elected Official of TRIBE be selected or used by MANAGER as a vendor of the Tribal Gaming Operation.

7.2 INTERFERENCE IN TRIBAL AFFAIRS. MANAGER, including any partner, employee or agent of MANAGER, whether or not members of TRIBE, shall not, directly or indirectly, attempt to or unduly

interfere with, become involved in, or attempt to influence the internal affairs of TRIBE, its members or its government, including but not be limited to any attempt to influence the tribal election process, offer cash incentives, or make written or oral threats to the personal or financial status of any person, entity, or thing. Nothing contained herein shall be construed as preventing MANAGER from meeting with the Tribal Council, or TRIBE'S representatives with regard to the normal performance of MANAGER'S rights, duties and obligations as allowed or contemplated by this Agreement.

7.3 <u>SECURITY</u>. Pursuant to the requirements of Section 11 of the Compact, and the plan for safety and security to be developed thereunder, the Tribal Gaming Operation shall be responsible for providing a security force consisting of security officers sufficient to reasonably assure the safety of the customers, personnel, monies and property of the Tribal Gaming Operation.

Such security officers shall be employees of the Tribal Gaming Operation and shall report directly to the General Manager. MANAGER shall have exclusive responsibility for the employment of the security officers. The security personnel shall cooperate with law enforcement officers of TRIBE and the State of New York, and shall coordinate their activities with said officers when feasible.

officers, who are located on the Site to provide additional security to the Tribal Gaming Operation as provided in Section 4 of the Compact, provided, however, that as tribal law enforcement officers undertake and assume the duties

of and replace such state officers under the provisions of Section 4(f) of the Compact,

who shall be located on the Site,

7.4 COOPERATION BETWEEN SECURITY PERSONNEL AND LAW ENFORCEMENT OFFICERS. Subject to Section 11 of the Compact, MANAGER and TRIBE may develop mutually agreed upon policies and procedures related to security and law enforcement to ensure that the security personnel subject to MANAGER's control as set forth in Section 7.3 herein, the law enforcement officers subject to TRIBE'S control, and the state law enforcement officers work together in a cooperative and coordinated manner.

7.5 COMPLIANCE WITH TRIBAL AND FEDERAL LAW. The parties hereto agree to conduct gaming activities pursuant to this Agreement in accordance with the Ordinance, the Compact and IGRA.

7.6 TAXES BY NON-TRIBAL GOVERNMENT. If any non-tribal government attempts to impose any possessory interest tax or other

tax on either party to this Agreement regarding the Tribal Gaming Operation, the parties shall jointly resist such attempt through legal action.

7.7 **COMMISSION FEES; SELF-REGULATION**. TRIBE and MANAGER understand that Class II Gaming at the Tribal Gaming Operation is subject to a fee to be paid to the Commission pursuant to IGRA. TRIBE and MANAGER shall use their best efforts to establish regulation of the Tribal Gaming Operation by TRIBE in order that such fee is kept to a minimum. Such annual fee to the Commission . The Tribal Gaming Operation's accounting procedures shall be maintained so as to allow the calculation of the Commission's annual fee.

7.8 **LEGAL REPRESENTATION OF TRIBAL GAMING OPERATION**. MANAGER shall select and employ an attorney to represent the Tribal Gaming Operation in the general legal affairs of the Tribal Gaming Operation, and shall select and employ such other attorneys as are necessary to represent the Tribal Gaming Operation in any specific legal matters requiring specialized legal knowledge or expertise. Said attorney or attorneys shall be subject to approval of TRIBE, which approval shall not be unreasonably withheld, and shall be employed pursuant to written agreement executed by the authorized representative of each party.

Nothing contained herein shall prevent either party from engaging an attorney to represent its separate interests arising from this Agreement at each party's separate expense.

7.9 ADVERTISING. MANAGER shall have the responsibility to set a budget for advertising. MANAGER shall routinely advertise the Tribal Gaming Operation locally so that no more than two weeks at a time shall pass without some form of local advertising being placed before the public. In addition, MANAGER shall routinely advertise the Tribal Gaming Operation outside the said local area in a manner designed to increase Tribal Gaming Operation revenues.

7.10 DISPUTE RESOLUTION BETWEEN MANAGER AND CUSTOMERS. MANAGER shall have the responsibility to establish and implement procedures to resolve complaints received from any customer or member of the general public who is or claims to be adversely affected by any act or omission of the Tribal Gaming Operation. MANAGER shall receive and hear any such complaints and maintain complete records of any such complaint and the disposition thereof. Subsequent to the final disposition of any such complaint by the Tribal Gaming Operation, the customer or member of the public shall have any right provided by the Ordinance to have such complaint heard by the Tribal Gaming Commission. In conjunction with such action, MANAGER shall submit to the Tribal Gaming Commission the complete record of such complaint and disposition to be utilized by the Tribal Gaming Commission in its review and disposition thereof.

In addition, MANAGER shall have the right to investigate any and all complaints and correct problems, if any, identified in complaints as determined by MANAGER.

7.11 DISPUTE RESOLUTION BETWEEN MANAGER AND EMPLOYEES. MANAGER shall have the responsibility to establish and implement procedures to resolve complaints or grievances received from any employee of the Tribal Gaming Operation who is or claims to be adversely affected by any act or omission of the Tribal Gaming Operation. Subject to the specific provisions of the "Employee Grievance Procedure" to be developed by MANAGER, MANAGER shall receive and hear any such complaint or grievance and maintain complete records of any such complaint or grievance and the disposition thereof. Subsequent to the final disposition of any such complaint or grievance by the Tribal Gaming Operation, the employee of the Tribal Gaming Operation shall have any right provided by the Ordinance to have such complaint or grievance heard by the Tribal Gaming Commission. In conjunction with such action, MANAGER shall submit to the Tribal Gaming Commission the complete record of such complaint or grievance and the disposition thereof to be utilized by the Tribal Gaming Commission in its review and disposition thereof. In addition, MANAGER shall have the right to investigate any and all complaints or grievances and correct problems, if any, identified in such complaints or grievances as determined by MANAGER.

SECTION 8. FINANCIAL OPERATIONS

8.1 ANNUAL OPERATING BUDGET. Not less than sixty (60) days prior to commencement of operations and not less than sixty (60)

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days prior to each year of the term of this Agreement, MANAGER shall prepare an annual operating budget for the Tribal Gaming Operation, and shall submit said budget to the Executive Director, who shall promptly negotiate any proposed amendments with MANAGER. The Executive Director shall submit the budget to the Tribal Gaming Commission for approval.

8.2 **ANNUAL CAPITAL BUDGET.** Not less than sixty (60) days prior to commencement of operations and not less than sixty (60) days prior to each year of the term of this Agreement, MANAGER shall prepare an annual capital budget for the purpose of funding Capital Items for the Tribal Gaming Operation, and shall submit said budget to the Executive Director, who shall promptly negotiate any proposed amendments with MANAGER. The Executive Director shall submit the budget to the Tribal Gaming Commission for approval.

8.3 **BANK ACCOUNTS.** TRIBE and MANAGER shall select banks convenient to the location of the Facility for the deposit and maintenance of funds. All such depositories and the accounts therein shall be federally insured, and when possible, such

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MANAGER shall provide the Executive Director with a monthly report on all expenditures from the accounts. Said accounts shall be maintained in accordance with the following requirements:

(A) **Daily Expense Account**. MANAGER shall establish the Daily Expense Account within ten (10) working days following the Effective Date of this Agreement.

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(B) <u>Revenue Account</u>. MANAGER shall establish the Revenue Account no less than ten (10) working days prior to the opening date of the Tribal Gaming

(C) <u>Payroll Account</u>. MANAGER shall establish the Payroll Account within ten (10) working days following the Effective Date of this Agreement.

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(D) **Prize Account**. MANAGER shall establish the Prize Account no less than ten (10) working days prior to the opening date of the Tribal Gaming Operation.

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If MANAGER determines additional bank accounts are necessary for operational purposes, MANAGER may establish such accounts with the consent of the Executive Director.

8.4 **PETTY CASH FUND**. MANAGER is authorized to withdraw from time

establishment and maintenance of a petty cash fund to be used for miscellaneous small expenditures of the Tribal Gaming Operation,

shall be properly receipted.

8.5 **CASH BANK**. MANAGER is authorized to maintain a cash bank on the Tribal Gaming Operation premises for the purposes of day-to-day operations provided that such cash bank is adequately safeguarded from theft and embezzlement.

8.6 **CASH DISBURSEMENTS; COMPLIMENTARY SERVICES**.

(A) **Cash Disbursements**.

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MANAGER

shall have the obligation to promptly file any reports of gaming winnings and the names of winners that may be required by the Internal Revenue Service of the United States.

(B) <u>Complimentary Services</u>. Pursuant to Section 7(c) of the Compact, the Tribal Gaming Operation shall maintain a record of all complimentary services provided to patrons of the Facility or their guests, including either the full retail price of such service or item if the same service or item is normally offered for sale to patrons in the ordinary course of business at the Facility, or the cost of the service or item to the Tribal Gaming Operation if not offered for sale to patrons in the ordinary course of business. If the complimentary service or item is provided to a patron by a third party on behalf of the Tribal Gaming Operation, such service or item shall be recorded as an

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the Tribal Gaming Operation of having the third party provide such service or item. A log recording all such complimentary serviced having a value greater than Two Hundred Dollars ($200) shall be available for inspection by the gaming agency of the State of New

York in accordance with Section 11(b) and Appendix B of the Compact.

8.7 **DAILY DEPOSITS TO REVENUE ACCOUNT.** MANAGER shall collect, receive, and receipt all gross sales, revenues, and any other proceeds connected with or arising from the operation of the Tribal Gaming Operation, the sale of all products, food and refreshments, and all other activities on the Site, and deposit them daily maintained jointly by the parties as soon as reasonably possible after the close of business for the day. All monies received by the Tribal Gaming Operation on each day it is open for business, less any amount necessary to restore the cash bank on the premises to its required amount, must be delivered daily to a bonded courier service for deposit in the bank by the bonded courier service prior to the close of the next banking day.

8.8 **DAILY REPORTS; WEEKLY REPORTS.** MANAGER shall provide the Executive Director with a report following each day of gaming which

8.9 **MONTHLY REPORT AND PAYMENT DUE DATE.** By the fifteenth (15th) day following the end of the previous calendar month of operation under this Agreement, MANAGER shall provide TRIBE with

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verifiable financial reports which include a statement of the gross revenues, Operating Expenses, Gaming Net Revenues and Non-Gaming Net Revenues of the Tribal Gaming Operation. The monthly report shall include a summary of payroll expenditures.

8.10 RETIREMENT OF DEVELOPMENT EXPENSES, PAYMENT OF EXPENSES AND COMPENSATION. In consideration of the performance of its duties by MANAGER as described herein, and in consideration of the contributions of TRIBE, the proceeds of the Tribal Gaming Operation shall be distributed in accordance with the following provisions:

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8.11 ACCOUNTING AND BOOKS OF ACCOUNT.

(A) Table Games Revenue. All revenue from table games shall be recorded on a shift by shift basis for each gaming table. MANAGER shall maintain such records and provide them to the Executive Director on a daily basis.

(B) Bingo and Mini-Game Receipts. All revenue from bingo and related Class II games shall be recorded on a Session-by-Session basis. MANAGER shall maintain such records and provide them to the Executive Director on a daily basis. MANAGER shall maintain and provide TRIBE with an adequate accounting acceptable to TRIBE and MANAGER for income from Mini-Games pursuant to generally accepted accounting principles.

(C) Cash Register Revenue Receipts. Receipt forms for all revenue from Concessions shall be based upon a cash register system. All transactions shall be recorded on a receipt given to the customer and on a duplicate tape or electronic storage media inside the cash register. The following information shall appear upon the receipt and duplicate tape or electronic storage media: the name of the Tribal Gaming Operation operating the activity; the date the transaction took place; the receipt number; the amount of money paid, or a description of other consideration paid for the opportunity to play.

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The cash register receipt rolls or electronic storage media maintained in the machine showing those transactions shall be retained with the records of the Tribal Gaming Operation for a period of not less than five (5) years.

(D) Internal Revenue Service Reporting. MANAGER shall be responsible for compliance with the Internal Revenue Service Code of 1986, as amended, including Sections 1441, 3402(q), 6041 and 6050 I and Chapter 35 of such Code, requirements concerning the reporting and withholding of taxes with respect to the winnings from the Tribal Gaming Operation.

(E) Tribe's Designated Agent Responsible for Financial Oversight. The Tribal Gaming Commission and the Executive Director shall be responsible for oversight of compliance with this Agreement, and of MANAGER'S records, pursuant to the Ordinance and the Compact. MANAGER shall permit the Executive Director employed by TRIBE to have full, immediate and unrestricted access to the operations of the Tribal Gaming Operation, and the right to verify the daily gross revenue and income of the Tribal Gaming Operation, including without limitation the right to install, at TRIBE's sole expense, an electronic surveillance system and to employ personnel to operate such system and to make reports directly to the Tribal Gaming Commission,

the right to attend all gaming activities, inspect the cash register receipt system, inspect inventory, be present when receipts are counted, and participate in all aspects of the operation for monitoring purposes.

(F) **Monthly Statements**. MANAGER shall provide monthly statements to the Tribal Gaming Commission showing revenues and expenses of the gaming operation as attachments to the monthly payment to TRIBE, as required in Section 8.9 herein.

(G) **Records**. MANAGER shall maintain full and accurate books of account at its principal office. The books shall be kept on an accrual basis, and the records shall be prepared and maintained by using generally accepted accounting principles. The Tribal Gaming Commission, including the Executive Director, shall have full, immediate and unrestricted access to, and the full, immediate and unrestricted right to inspect and examine all books and financial records concerning the Tribal Gaming Operation at all times.

(H) **Accounting Services**. MANAGER shall hire a certified public accounting firm to perform accounting services for the Tribal Gaming Operation, provided that the form and manner of maintenance of the books of account for the Tribal Gaming Operation are consistent with generally

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accepted accounting principles.

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(I) **Audit**. An independent audit by a certified public accountant selected by TRIBE shall be performed annually, and shall meet the standards of 25 C.F.R. § 571.12.

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TRIBE shall have the right at any time to secure an independent audit of the Tribal Gaming Operation. All contracts for supplies, services or concessions for a contract amount in excess of Twenty-five Thousand Dollars ($25,000) annually relating to such gaming shall be subject to such independent audits.

(J) **Compact/Miscellaneous**. The accounting, books of account and audits of the Tribal Gaming Operation shall conform to the requirements of the Compact, in particular Section 3 and Appendices "B" and "C" thereof. Further, MANAGER shall provide for the establishment and maintenance of satisfactory accounting systems and procedures, as required by 25 C.F.R. § 531.1(c), that shall (i) include an adequate system of internal accounting controls; (ii) be susceptible to audit; (iii) permit the calculation and payment of the Management Fees; and (iv) provide for the allocation of operating expenses among TRIBE, MANAGER and any other user of shared facilities.

8.12 INSURANCE AND BONDS. MANAGER shall obtain public liability insurance

for all activities on the subject property. MANAGER shall also keep the buildings, improvements, and contents therein insured for their full replacement value against loss or damage by fire, with extended coverage endorsement to include robbery, theft, malicious mischief and vandalism coverage. The exact nature and extent of such coverage shall be jointly agreed upon by the parties. TRIBE and MANAGER shall be named as the insured in all policies to the extent of their interests and MANAGER shall supply written evidence of such coverage to TRIBE and to the Commission.

8.13 SUBCONTRACTS; ASSIGNMENTS. MANAGER may, with the written consent of the Tribal Gaming Commission, subcontract with other businesses to provide non-gaming services directly related to the operation of the Tribal Gaming Operation; provided, however, that no subcontract or assignment shall transfer or in any other manner, convey any interest in land or other real property. All subcontracts for supplies, services and concessions for a contract amount in excess of Twenty-five Thousand Dollars ($25,000) shall be subject to independent audit pursuant to the requirements of 25 U.S.C. § 2710(b)(2)(D). All vendors under such subcontracts shall comply with the provisions of Section 6(k) of the Compact. This Agreement shall be assignable by MANAGER with the consent of TRIBE, subject to the approval of the Chairman pursuant to 25 C.F.R. § 535.2.

SECTION 9. DISCLOSURES AND WARRANTIES

9.1 PROVISION OF INFORMATION TO THE COMMISSION AND THE STATE OF NEW YORK. MANAGER agrees to provide all information required by the Indian Gaming Regulatory Act, 25 U.S.C. § 2711 and 25 C.F.R. Part 533 to TRIBE for transmission to the Secretary or his authorized representative, and/or the Chairman or his authorized representative as soon as practicable after the date of execution of this Agreement. MANAGER shall also provide all information as required from time to time by the Compact to the gaming agency of the State of New York.

9.2 DISCLOSURES REGARDING PERSONS HAVING DIRECT OR INDIRECT FINANCIAL INTEREST IN CONTRACT. MANAGER agrees that as soon as practicable after the execution date of this Agreement all persons having a direct or indirect financial interest in this Agreement, and all pertinent information regarding said persons, shall be listed in Attachment I herein.

9.3 APPROVAL OF CHANGE IN OPERATIONAL CONTROL OF MANAGER. Any substantial change in the operational control of MANAGER, including any change in the ownership of MANAGER in which any person or entity not previously disclosed pursuant to Section 9.2 herein becomes a partner of MANAGER, shall be submitted as a modification of this Agreement for written approval of TRIBE and the Chairman of the Commission under 25 C.F.R. Part 535. Approval of any such change in control or ownership of MANAGER must be preceded by a complete background investigation of such person or entity.

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9.4 FINANCIAL INTERESTS. MANAGER shall comply with the provisions of 25 C.F.R. Part 537, including without limitation requirements that the principals referenced in Section 9.2: (1) disclose as soon as practicable after the date of execution of this Agreement all sources of financial contribution to them and declare that they have not received any gifts, loans, investments or other funds for the purpose of investing in MANAGER'S agreement with TRIBE from any source which has not been named in said written disclosure; (2) declare that they have no management, financial or ownership interests other than the interests, if any, that have been disclosed in writing to TRIBE; and (3) declare that they have not been arrested, indicted for, convicted of, or pleaded nolo contendere to any felony, or had any association with individuals or entities connected with organized crime. For the purposes of this Section, any management, financial, or ownership interests that are set forth in a written document shall be considered "undisclosed" until a copy of such document is provided to TRIBE.

9.5 BACKGROUND INVESTIGATIONS. MANAGER agrees that all parties in interest referenced in Section 9.2 herein shall be required to consent to background investigations to be conducted pursuant to the terms of IGRA, the Ordinance and the Compact. MANAGER shall require all Key Employees and Primary Management Officials to submit to such investigations prior to employment of said employees and shall ensure that TRIBE and the Commission or its duly authorized representative may inspect reports regarding said investigations. All other employees of the Tribal Gaming Operation shall also submit to such investigations pursuant to the

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provisions of the Ordinance or Compact. MANAGER further agrees that all persons in interest listed in Section 9.2 herein shall disclose any information requested by TRIBE which would facilitate in the background and financial investigations and will cooperate fully with such investigations.

9.6 **DISCLOSURE OF INFORMATION**. Any false or deceptive disclosures or failure to cooperate fully with such investigations by an employee of MANAGER or an employee of the Tribal Gaming Operation shall result in the immediate dismissal of such employee. MANAGER agrees that whenever there is any change in the information disclosed pursuant to this Agreement, MANAGER shall immediately notify the Tribal Gaming Commission of such change not later than thirty (30) days following MANAGER'S actual knowledge of such change.

9.7 **NO PAYMENT MADE**. MANAGER hereby specifically represents that no payment whatsoever has been paid to any Elected Official of TRIBE or Relative of an Elected Official of TRIBE nor has promise of payment been made by MANAGER to any Elected Official of TRIBE or Relative of an Elected Official of TRIBE to secure, obtain or maintain this Agreement or any other privilege associated with this Agreement. No payments will be made in the future to such persons for the purpose of obtaining or maintaining this Agreement, or any other privilege associated herein.

9.8 **NO PARTY INTEREST**. MANAGER hereby specifically represents that no person or entity having a direct or indirect financial interest in, or management responsibility for this Agreement is an Elected Official of TRIBE or Relative of an Elected

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Official of TRIBE. In the event any person or entity having a direct or indirect financial interest in, or management responsibility for this Agreement becomes an Elected Official of TRIBE or Relative of an Elected Official of TRIBE, said person shall immediately divest himself of his interest in this Agreement.

SECTION 10. ENFORCEMENT AND TERMINATION OF AGREEMENT

10.1 NOTICE. To be effective, all notices, consents, agreements or other communications required or permitted hereunder shall be in writing. A written notice or other communication shall be deemed to have been given hereunder (i) if delivered by hand, when the notifying party delivers such notice or other communication to all other parties to this Agreement, (ii) if delivered by telecopier or overnight delivery service, on the first business day following the date such notice or other communication is transmitted by telecopier or timely delivered to the overnight courier, or (iii) if delivered by mail, on the third business day following the date such notice or other communication is deposited in the U.S. mail by certified or registered mail addressed to the other party. Mailed or telecopied communications shall be directed as follows unless written notice of a change of address or telecopier number has been given in writing in accordance with this Section:

If to the MANAGER: President Riverboat Casinos
802 North First Street
St. Louis, MO 63102
ATTN: Edward Ellers, President
Telecopier No. (314) 622-3049

With a copy to: Michael Forman, Esq.
1401 Walnut Street
Philadelphia, PA 19102

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Telecopier No. (215) 568-6603

If to TRIBE: St. Regis Mohawk Tribe
Community Building
Hogansburg, New York 13655
ATTN: Chief David Jacobs, Chief John Loran, Chief Norman Tarbell
Telecopier No. (518) 348-3203

With a copy to: Arthur Gajarsa, Esq.
1300 19 St. NW - Suite 400
Washington, D.C. 20036
Telecopier No. (202) 293-2309

10.2 EXPIRATION OF TERM.

Class II and Class III Gaming at the Tribal Gaming Operation, unless mutually extended pursuant to Section 5.2.

10.3 VOLUNTARY TERMINATION OF AGREEMENT. This Agreement may be terminated upon mutual written consent of both parties.

10.4 TERMINATION DUE TO MATERIAL BREACH. Either party may terminate this Agreement, following the provisions for notice of cure required in Section 10.5 herein, if the other party commits, or allows to be committed, any material breach of this Agreement. Notice of the termination shall be provided by TRIBE to the Chairman of the Commission within ten (10) days after termination. Material breach of this Agreement shall include, but not be limited to, the following:

(A) Subject to the provisions of Sections 10.5 and 10.9, breach of warranty or failure of either party to perform any material duty or obligation for a period of thirty (30) consecutive business days after the required date of performance as set forth by the terms of this Agreement;

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(B) The conviction of any person or entity having a direct financial interest in, or management responsibility for this Agreement of any felony, of any crime involving any aspect of the gaming operation or involving a gaming law violation, or of any crime involving moral turpitude, by a court of competent jurisdiction;

(C) The dissolution, insolvency or bankruptcy of MANAGER;

(D) A final unappealable decision by the Commission of any material violation of IGRA;

(E) Revocation of or refusal to renew any license which may hereafter be required by TRIBE pursuant to applicable tribal law in effect at the time of issuance or renewal of the license, provided that such revocation or refusal to renew license shall be for cause. TRIBE shall not unreasonably seek such revocation and shall not unreasonably refuse to renew license, and shall provide MANAGER with due process at every phase of any proceeding relating to revocation of license or refusal to renew license; and

(F) Revocation of or refusal to renew any license which may hereafter be required by the State of New York pursuant to the Compact, provided that such revocation or refusal to renew license shall be for cause.

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10.5 NOTICE PRIOR TO TERMINATION FOR MATERIAL BREACH. Neither party may terminate this Agreement on the grounds of a material breach unless (i) written notice is provided by the nondefaulting party to the alleged defaulting party identifying the nature of the material breach and its intention to terminate this Agreement, and (ii) the defaulting party fails to cure or take steps to substantially cure such breach within thirty (30) days after receipt of such notice. Discontinuance or substantial correction of the material breach within such thirty (30) day notice period shall constitute a cure thereof.

10.6 TERMINATION OR EXPIRATION OF AGREEMENT; DISPOSITION OF PROPERTY RECORDS, GAMING NET REVENUES AND NON-GAMING NET REVENUES. Upon the expiration of the term of this Agreement, or if this Agreement is terminated or the Tribal Gaming Operation ceases operations prior to the expiration of the term of this Agreement or is ordered to cease operations by a court of competent jurisdiction,

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10.7 TERMINATION FOR CAUSE; RETURN OF MANAGER'S FINANCIAL CONTRIBUTIONS. In the event this Agreement is terminated for cause due to the fault of either party and MANAGER has not been repaid by

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The terms and conditions contained in this Section shall survive any termination of this Agreement.

10.8 RESOLUTION OF DISPUTES; LIMITED WAIVER OF SOVEREIGN IMMUNITY. TRIBE and MANAGER hereby covenant and agree that they each may sue or be sued to enforce or interpret the terms, covenants and conditions of this Agreement or to enforce the obligations or rights of the parties hereto in accordance with the terms and conditions set forth in this Section.

(A) Forum. Any action with regard to a controversy, disagreement or dispute between the TRIBE and

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MANAGER arising under this Agreement shall be brought before the appropriate United States District Court. In the event such federal court should determine that it lacks subject matter jurisdiction over any such action, such action shall be brought before the appropriate state court.

(B) **Waiver of Tribal Remedies.**

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(C) **Limited Waiver of Sovereign Immunity.**

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(D) Survival. The waivers contained in this Section shall survive any termination of this Agreement.

10.9 FORCE MAJEURE; INTERRUPTION OR FRUSTRATION OF PURPOSE OF THIS AGREEMENT.

(A) Force Majeure. Neither TRIBE nor MANAGER shall be considered in default or in breach of any terms or conditions of this Agreement in the event performance of one or both of such parties' obligations hereunder is delayed because of an unforeseeable cause beyond the parties' control and without the parties' fault and/or negligence, including, but not limited to, acts of God, earthquakes, weather, war, riots, acts of a public enemy, acts of the federal government, acts of the state government, acts of another party, fines, floods, epidemics, strikes, or for delays of any suppliers due to such causes. In the event of any such delay at any time, the completion or delivery

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under this Agreement shall be extended for the period of such delay upon written notice from the party seeking the extension to the other party.

(B) <u>Interruption or Frustration of Purpose of this Agreement</u>. In the event any governmental entity by means of police, judicial, legislative or administrative action, whether federal, state, county, municipal or tribal, or any group of individuals through the use of force or physical intimidation effectively inhibit regularly scheduled gaming activities from proceeding on a reoccurring basis, MANAGER may, in its judgment, suspend the performance of its obligations hereunder for such time as the Tribal Gaming Operation is so prevented from operating. If Tribal Gaming Operation is not permitted to operate for any period of time exceeding fourteen (14) days, then no payment whatsoever shall be made to TRIBE or MANAGER from the Gaming Net Revenues and/or the Non-Gaming Net Revenues. If such interruption, which in the opinion of either party hereto, effectively prevents the Tribal Gaming Operation from regularly engaging in the business intended hereunder, it is agreed that legal counsel shall be engaged, the selection of which shall be jointly agreed upon by TRIBE and MANAGER

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SECTION 11. EFFECTIVE DATE; MISCELLANEOUS

11.1 EFFECTIVE DATE. This Agreement shall be effective and binding as of date of the approval of this Agreement by the Chairman of the Commission, as provided by 25 C.F.R. § 533.1(n).

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11.2 CONSENT. Whenever the consent of a party shall be required to be obtained by the other party under any provision of this Agreement, such consent shall not be unreasonably withheld.

11.3 INTEGRATION. This Agreement embodies the entire agreement and understanding among the parties hereto relating to the subject matter hereof and supersedes all prior agreements, understandings, representations, and discussions, including without limitation the Memorandum of Understanding.

11.4 AMENDMENT. TRIBE and MANAGER shall not amend, modify, or waive any provision of this Agreement without the written consent of both parties unless expressly permitted under the terms of this Agreement.

11.5 SEVERABILITY. If any one or more of the provisions contained in this Agreement, or any application hereof, shall be invalid, illegal, or unenforceable in any respect, the validity, legality, or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

11.6 GOVERNING LAW. This Agreement shall be governed by the laws of the United States of America, and where such laws are nonexistent or inapplicable, the laws of the State of New York.

11.7 COUNTERPARTS. This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same instrument.

11.8 SURVIVAL. The terms and conditions contained in Sections 11.1 through 11.8 shall survive any termination of this Agreement.

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TRIBE represents and warrants that the terms and conditions of this Agreement shall become binding and enforceable upon TRIBE upon the execution of this Agreement by two of the three Tribal Council Chiefs, subject to the approval of the Chairman of the Commission.

THE ST. REGIS MOHAWK TRIBE

By: _____
L. David Jacobs, Head Chief

By: _____
John S. Loran, Chief

By: _____
Norman Tarbell, Chief

PRESIDENT R.C.- ST. REGIS MANAGEMENT COMPANY

By: PRC-ST. REGIS, INC.,
Managing Partner

By: _____
Edward Ellers, President

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