SECOND AMENDED MANAGEMENT AGREEMENT

BETWEEN

THE YAVAPAI-APACHE NATION

AND

FITZGERALDS ARIZONA MANAGEMENT, INC.

TABLE OF CONTENTS

	Page
RECITALS	1
TERMS AND CONDITIONS	3
I. DEFINITIONS	3
II. ENGAGEMENT OF MANAGER	10
III. CASINO FACILITY	11
IV. DUTIES AND RESPONSIBILITIES	11
A. Pre-Opening	12
1. Pre-Opening Program and Budget	12
2. Pre-Opening Expenses	12
3. Pre-Opening Staff Training	12
4. Pre-Opening Advertisement	13
5. Initial Operating Supplies	13
6. MANAGER's Pre-Opening Standards	13
B. Hiring of Key Personnel	13
1. General Manager	13
2. Director of Finance	14
3. Director of Gaming	14
4. Director of Surveillance	14
C. Supervisors and Managers	14
D. Improvements, Development, and Maintenance	14
1. Design and Construction	14
2. Improvements	15
3. Performance Bonds	15
4. Repairs and Maintenance	16
E. Operational Standards	16
F. Daily Operations	17
G. Policy Decisions	18
H. Fire and Security	18
I. Sales, Marketing, and Advertising	18
J. NEPA Compliance	19
K. Logistical Support and Supplies	19
L. Personnel and Employment Practices	19
1. Management Team	19
2. Removal of Key Personnel	19
3. Employees	20
4. Instruction and Training	21
5. Tribal Employment and (Sub)Contracting Preference	22
a. Employment	22
b. (Sub)contractors	22
M. Financial Management Practices, and Reporting Requirements	23

1. Collection of Revenues by the MANAGER 24
2. Payment of Operating Costs 24
3. Cash Management System 24
4. Financial Reports 25
5. Annual Audit 27
6. Audit of Contracts 28
N. Compliance with Internal Revenue Code 28
O. Insurance 28
1. Coverages 28
2. Standards and Insured Parties 29
3. Cancellation of Certificates and Policies 29
4. Loss and Damage 30
5. Subrogation 31
P. Casino Finance Package 31
Q. MANAGER's Representations and Warranties 32
R. NATION's Representations and Warranties 34
S. Prohibited Use of Property 37
T. Indemnification 37
1. Hazardous Waste--MANAGER 37
2. Hazardous Waste--NATION 38
3. Notice of Discharge 39
4. Claims and Liabilities--MANAGER 40
5. Claims and Liabilities--NATION 40
6. Claims Covered by Insurance 40
7. Survival of Indemnifications 41
8. Admissions and Settlement 41
U. Educational Assistance 42
V. ENCUMBRANCING PROHIBITED 42
VI. COMPENSATION 42
A. Initial Lump Sum Advance 42
B. Guaranteed Minimum Payment to the Nation 43
C. Calculation and Payment of Management Fee and NATION's Share of Net Revenue 44
D. Planning and Development Assistance 46
VII. ANNUAL PLAN 47
VIII. NATION APPROVALS 49
IX. DEFAULT; TERMINATION 49
A. Time is of the Essence 49
B. Events of Default 50
1. Payments 50
2. Representations and Warranties 50
3. Performance of Covenants and Warranties 50
4. Insolvency and Bankruptcy 50
5. Performance of Material Management Duties 51
6. Unremedied Defaults 51
7. Determinations of Default 51

	8. Other Events of Default	51
	C. Cure Period Extended	52
	D. Termination of Agreement	52
X.	BUY-OUT OF MANAGEMENT AGREEMENT; ADDITIONAL TERMINATION FEE	53
	A. Buy-Out	53
	B. Additional Termination Fee	53
XI.	NON-COMPETITION	54
	A. MANAGER	54
	B. NATION	55
	C. Non-Competition is of the Essence	55
XII.	EXPANSION RIGHTS	55
XIII.	SALE OF ALCOHOLIC BEVERAGES	56
XIV.	FEDERAL TRADER'S LICENSES	56
XV.	RECORDATION	57
XVI.	ORDINANCE AND COMPACT	57
XVII.	LICENSING AND APPROVALS	57
XVIII.	NON-INTERFERENCE WITH TRIBAL GOVERNMENT	57
XIX.	TRIBAL REGULATION AND LAW ENFORCEMENT	58
XX.	PATRON DISPUTES	59
	A. Gaming Disputes	59
	1. Substantial Disputes	59
	2. Non-Substantial Disputes	59
	B. Notice	60
	C. Effective Date of Decision	60
	D. Review of Decision	60
XXI.	CONSTRUCTION AND FORUM	60
XXII.	ARBITRATION	61
	A. Arbitration	61
	B. Notice	61
	C. Response	61
	D. Arbitration Panel	61
	E. Arbitration Decision	61
	F. Arbitration Costs	62
XXIII.	LIMITED WAIVER OF SOVEREIGN IMMUNITY; JURISDICTION	62
XXIV.	DEFAULT FEES	63
XXV.	DELAY OR OMISSION	63
XXVI.	NOTICE	64
XXVII.	ENTIRE AGREEMENT; MODIFICATION	65
XXVIII.	PREAPPROVAL; GOOD FAITH	65
	A. Approval Required	65
	B. Best Efforts	65
XXIX.	SECURED INTEREST	66
XXX.	ASSIGNMENT OF AGREEMENT; SUBCONTRACTORS	66
	A. Assignment	66

B. Subcontractors 67
XXXI. INSPECTION AND TESTING 67
XXXII. SEVERABILITY 68
XXXIII. HEADINGS 68
XXXIV. GENDER 68
XXXV. AMENDMENT OF AGREEMENT 68

EXHIBIT A--SURVEY 72

EXHIBIT B--PRE-OPENING LOAN TERMS AND CONDITIONS 73

EXHIBIT C--CASINO FINANCING TERMS AND CONDITIONS 74

EXHIBIT D--CONTINUING GUARANTEE 75

EXHIBIT E--EXAMPLE OF MONTHLY DISBURSEMENT OF GROSS RECEIPTS ACCOUNT 76

EXHIBIT F--EXAMPLE CALCULATION OF MANAGEMENT FEES 77

EXHIBIT G--AMENDED BUSINESS PLAN 78

SECOND AMENDED MANAGEMENT AGREEMENT

THIS SECOND AMENDED MANAGEMENT AGREEMENT ("Agreement") is entered into in duplicate this _____ day of _____, 1995, by and between the YAVAPAI-APACHE NATION, a federally-recognized Indian tribe (the NATION"), whose address is Box 1188, Camp Verde, Arizona 86322, and FITZGERALDS ARIZONA MANAGEMENT, INC., a Nevada corporation ("MANAGER"), whose address is 250 North Virginia Street, Reno, Nevada 89501, with respect to the following:

RECITALS

WHEREAS the NATION is a federally-recognized Indian tribe and is the equitable owner of certain real estate consisting of approximately _____ (___) acres ("the Property"), which will be surveyed and more particularly described, which description will then be attached hereto as Exhibit A and incorporated into this Agreement by reference; and

WHEREAS the NATION wishes to conduct gaming and related activities on the Property to increase its revenues and to enhance its economic self-sufficiency and self-government; and

WHEREAS the Indian Gaming Regulatory Act, Public Law 100-497, 25 U.S.C.A. §§ 2701-21, 18 U.S.C.A. §§ 1166-68 (the "Act"), was enacted by the Congress of the United States and signed into law on October 17, 1988; and

WHEREAS the Property is qualified under the "Act" for the conduct of gaming; and

WHEREAS the NATION has enacted the Gaming Ordinance of the Yavapai-Apache Tribe, as amended ("Ordinance"), which governs the conduct of all gaming within the exterior boundaries of the Yavapai-Apache Nation Reservation ("Reservation"), which Ordinance has been approved by the National Indian Gaming Commission; and

WHEREAS the Ordinance authorizes the NATION to conduct gaming on the Reservation; and

WHEREAS the NATION has entered into a Tribal-State Compact ("Compact") with the State of Arizona ("State") pursuant to the Act, which Compact authorizes the NATION to operate Class III gaming activities on the Reservation and which Compact has been approved by the Secretary of the Interior; and

WHEREAS the NATION wishes to develop, operate, and conduct both gaming and non-gaming enterprises on or near the Property; and

WHEREAS the NATION wishes to engage the MANAGER to manage the gaming and non-gaming enterprises; and

WHEREAS the MANAGER wishes to manage the gaming and non-gaming enterprises for the NATION; and

WHEREAS the NATION and the MANAGER desire to execute an agreement that complies with the Act, the Compact, and the Ordinance, and establishes their respective rights and responsibilities with respect to the management of the gaming and non-gaming enterprises;

NOW, THEREFORE, in consideration of the Recitals hereinabove mentioned and of the terms, conditions, covenants, and warranties hereinafter mentioned to be kept, honored, and performed by the parties, it is hereby agreed as follows:

TERMS AND CONDITIONS

I. DEFINITIONS

A. "Agreement Date" shall mean the date on which this Agreement is fully executed by the parties.

B. "Annual Plan" shall mean a statement of the estimated income and expenses of the Casino for the coming fiscal year, including estimates as to Gross Receipts and Operating Costs for both Gaming Activities and Non-Gaming Activities for such fiscal year, such statement to identify such Activities separately and to include the estimated results of each fiscal month of the subject fiscal year; a capital improvement budget, including estimates as to amounts and timing of all anticipated replacements, additions, rehabilitation, or other capital expenditures for the coming fiscal year consistent with industry practices; and a statement of the minimum balance to be maintained in the Casino's operating account(s); and which statement shall set forth in detail the estimated amount of funds, if any, that will be required for working capital requirements and other expenditures authorized under the Annual Plan.

C. "Approval Date" shall mean the date on which this Agreement is approved by the National Indian Gaming Commission.

D. "Casino" shall mean the Gaming Activities and Non-Gaming Activities conducted in, on, or about the Property, whether in a new or renovated facility or a portion thereof or an area therein.

E. "Commencement Date" shall mean the date on which the permanent Casino facility opens to the public and begins operating in accordance with the Compact and applicable laws and regulations.

F. "De Minimis Amounts" means (1) with respect to any given level of Hazardous

Waste, that such level or quantity of Hazardous Waste (in any form or combination of forms) does not constitute a violation of any Environmental Requirements, (2) is customarily employed in, or associated with, commercial, retail, and/or residential facilities in Arizona, (3) occurs naturally on or about the Property, or (4) consists of fuels and components, in normal and reasonable quantities, in vehicles frequenting the Property in the ordinary course of business as invitees, or otherwise regularly providing required commercial or business services to the Casino.

G. "Environmental Damages" shall mean all claims, causes of action, proceedings, complaints, judgments, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, and costs and expenses of investigation and defense of any claim [(whether or not such claim is ultimately defeated)], and settlement of any claims or judgments, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including but not limited to reasonable attorneys' fees and disbursements and consultants' and experts' fees, any of which arise out of or are incurred at any time as a result of the presence, release, or disposal of Hazardous Waste upon, from, or beneath the Property, or migrating or threatening to migrate from the Property, or as a result of the existence of a violation of any Environmental Requirements pertaining to the Property, and including but not limited to:

1. The resultant actual and consequential damages for personal injury, or injury to property or natural resources occurring upon or off of the Property, including but not limited to lost profits, consequential damages, the cost of demolition and rebuilding of any improvements on the Property, and interest and penalties; and including but not limited to any diminution in the value of the Property, and damages for the loss of business or restriction on the use of or adverse impact on the marketing of rentable or useable space or any amenity of the Property;

2. Reasonable fees incurred for the services of attorneys, consultants, contractors, experts, laboratories, and all other costs incurred in connection with the investigation, on-site and off-site cleanup if off-site cleanup is a direct result of an on-site occurrence, removal, or remediation of such Hazardous Waste or violation of any Environmental Requirements, including but not limited to the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration, or monitoring work required by any federal, state, tribal, or local governmental agency or political subdivision, or reasonably necessary to make full economic use of the Property and from which such Hazardous Waste is migrating or threatening to migrate from the Property, or otherwise expended in connection with such conditions; including but not limited to any attorneys' fees, costs, expert witness fees, and expenses incurred in enforcing this Agreement or collecting any sums due hereunder; and including but not limited to any and all costs of remediation as may be required or necessary to bring the Property into full compliance with all Environmental Requirements, as such compliance may be defined or mandated by any federal, state, tribal, or local governmental agency or political subdivision;

3. Liability to any third person or governmental agency to indemnify such person or agency for costs incurred in connection with such presence, release, or disposal of Hazardous Waste or the violation of any Environmental Requirements; and

4. Any and all Remedial Work.

H. "Environmental Requirements" shall mean all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, of all governmental agencies, departments, commissions, boards, bureaus, authorities, or instrumentalities of the United States, the State of Arizona, the NATION, and any political

subdivisions thereof as any such may be amended from time to time ("Laws"); and all applicable judicial, administrative, and regulatory decrees, judgments, and orders ("Orders") relating to the protection of human health or the environment, including but not limited to all Laws and Orders for or concerning reporting, licensing, permitting, investigating, or remediating emissions, discharges, spills, or releases, threatened or actual, of any chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials, or wastes, including Hazardous Waste, whether solid, liquid, or gaseous in nature, into the air, surface water, groundwater, or land; and including but not limited to all Laws and Orders relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of chemical substances, pollutants, contaminants, or hazardous or toxic substances, materials, or wastes, including Hazardous Waste, whether solid, liquid, or gaseous in nature.

I. "Gaming Activities" shall include Class III gaming activities, as defined by the Act, and any related activities conducted in direct support of such gaming activities.

J. "Gaming Commission" shall mean the NATION's Gaming Commission as established by the Ordinance, which Commission is distinct and separate from the National Indian Gaming Commission referred to throughout this Agreement by its full name.

K. "Gross Receipts" shall mean any and all sales, gross receipts, revenues, rentals, and other income derived by the Casino from Gaming Activities, Non-Gaming Activities, and any and every other use of the Property or any portion thereof, whether directly or indirectly derived, paid, or received; including but not limited to money and any other thing of value received or paid or derived from business done, sales made, or services rendered. All income accruing from credit transactions shall be treated as "Gross Receipts" as of the date credit is extended. "Gross Receipts" shall be calculated on a fiscal year basis to be agreed upon by the parties at a later date.

"Gross Receipts" shall not include: (1) amounts collected and paid out for a sales or excise tax imposed by a governmental authority where such tax is billed to the purchaser as a separate item; or (2) credits for the exchange of goods or merchandise, when such exchange is made solely for the convenient operation of business and not for the purpose of consummating a sale previously made directly or indirectly from or on the Property; and (3) uncollected credit transactions that are written off as bad debts in accordance with Generally Accepted Accounting Principles.

L. "Hazardous Waste" shall mean any waste substance, material, smoke, gas, particulate matter, or combination thereof, that:

1. is defined to be hazardous or toxic by any federal, state, or tribal statute, regulation, rule, ordinance, or amendments thereto, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or the Resource Conservation and Recovery Act of 1976, as either act may be amended from time to time; provided that any such tribal statute, regulation, rule, ordinance, or amendment is adopted only after providing public notice of the proposed action, an opportunity to comment thereon, and an opportunity for a hearing, including input by the MANAGER, which activity shall not be deemed to be interference with tribal government in violation of this Agreement;

2. is hazardous, explosive, infectious, radioactive, carcinogenic, mutagenic, toxic, ignitable or flammable, reactive, or corrosive and that is or becomes regulated as such by any governmental agency, department, commission, board, agency, or instrumentality of the NATION, the State of Arizona, or the United States of America;

3. requires investigation or remediation under any federal, state, local, or tribal statute, regulation, rule, ordinance, order, action, policy, or common law; or

4. contains asbestos, polychlorinated biphenyls ("PCBs"), petroleum hydrocarbons, urea formaldehyde foam insulation, or radon gas other than such radon gas as may occur naturally on the Property.

M. "Key Personnel" shall mean the General Manager, Director of Finance, Director of Gaming, and Director of Surveillance.

N. "Net Revenues" shall mean the amount by which all Gross Receipts exceed Operating Costs.

O. "Non-Gaming Activities" shall mean all activities conducted at or in relation to the Casino, including but not limited to food, beverage, and retail sales, which activities are not conducted in direct support of gaming.

P. "Operating Costs" shall mean all costs, expenses, and interest of and for maintaining, conducting, and supervising the management and operations of the Casino, except as expressly excluded herein, which costs, expenses, and interest are incurred pursuant to this Agreement including but not limited to, individually or collectively, (1) purchases of goods, wares, and merchandise; (2) advertising and promotional expenses; (3) personnel payroll and associated costs, including but not limited to employee benefit plan costs and applicable federal and state payroll taxes; (4) instruction and training expenses; (5) maintenance or repairs of gaming devices and other equipment; (6) depreciation as appropriately allocated to buildings, gaming devices, other gaming equipment, and other equipment used in the Casino; (7) printing; (8) rent, janitorial, trash removal, and security services; (9) legal, accounting, and other professional fees; (10) license fees; (11) utilities, including but not limited to telephone; (12) insurance; (13) vehicle expenses; (14) prizes for winners of games; (15) reasonable travel expenses, provided that first class travel shall not be approved except when other accommodations are not available; (16)

licensing and certification fees for the Casino and its employees, including Key Personnel, as may be required by under the Compact, the Act, or the Ordinance; (17) other expenses specifically characterized in this Agreement as Operating Costs; (18) interest payments on indebtedness incurred for the development, operation, or maintenance of the Casino; and (19) all other expenses reasonably necessary for the efficient and profitable operation and conduct of the Casino. Such Operating Costs shall be separately recorded for Non-Gaming Activities and Gaming Activities and shall be allocated between the two activities, as appropriate. Operating Costs shall not include management fees, licensing fees, and related costs of the MANAGER and its officers, directors, or employees; technical service fees as they relate to the permanent Casino facility or the temporary Casino, which fees are a capitalized pre-opening expense paid to the MANAGER pursuant to the Technical Services Agreement between the parties; and expenses and costs not in the normal course of business.

Q. "Person" shall mean any natural person or individual, or group or combination thereof acting as a unit, however associated; any organization of any kind, whether organized for profit or not, and regardless of the manner of form in which it does business, whether as a sole proprietorship, receiver, partnership, joint venture, trust, estate, firm unincorporated association, corporation, or government, including but not limited to any part, subdivision, or agency of any of the foregoing; and any combination of natural persons or organizations in whatever form, and the plural as well as the singular number.

R. "Remedial Work" shall mean (1) the costs of removal of any and all Hazardous Waste from all or any portion of the Property or the adjacent property, (2) the costs required to take necessary precautions to protect against the release of Hazardous Wastes on, in, under, or affecting the Property into the air, ground, body of water, or adjacent property to the extent

required by the Environmental Requirements or any governmental entity or authority, including but not limited to the costs of environmental testing and assessments; and (3) the costs incurred to comply, or to bring all or any portion of the Property or any adjacent property adversely affected into compliance with all applicable Environmental Requirements, including but not limited to payment of any fines, penalties, and administrative and overhead costs charged or assessed by any governmental entity or authority.

S. "Tribal Council" shall mean the Tribal Council of the Yavapai-Apache Nation.

II. ENGAGEMENT OF MANAGER

The NATION hereby retains and engages the MANAGER from and after the Approval Date or Commencement Date, whichever is later, for a term [redacted] upon the terms and conditions provided herein to finance, improve, construct, develop, manage, operate, and maintain the Casino and its facilities and to direct the management and operation of the Casino on behalf of and for the account of the NATION in accordance with the applicable provisions of this Agreement and as otherwise mutually agreed by both parties, and the MANAGER agrees to accept such engagement. The NATION and the MANAGER agree to cooperate with one another in every reasonable and proper way to permit and assist each other in carrying out their respective duties hereunder. The MANAGER is a consultant and independent contractor and shall not be deemed to be or treated as if it is an employee of the NATION. In addition, regardless of the fact that the MANAGER's fee may be determined in part on a percentage basis, the NATION and the MANAGER are not in partnership or joint venture, nor are they or shall they be deemed to be partners or joint venturers of any kind or for any purposes.

64

III. CASINO FACILITY

The MANAGER, after consultation with and subject to the approval of the NATION, will design and construct or renovate, or cause to be designed and constructed or renovated, one or more facilities or portions thereof for the use of the Casino in accordance with Section IV(P), "Casino Finance Package," of this Agreement. The Casino facilities will complement and conform in style to neighboring structures and the natural setting, and upon full build-out will include at a minimum a buffet-style restaurant, gift shop, administration offices, parking facilities and such other spaces as the NATION and the MANAGER may agree upon, but gaming floor space shall not exceed [redacted]. The facilities may be built in one or more phases as mutually agreed and may include certain buildings or portions thereof that are currently owned by the NATION. Detailed site plans and cost estimates for the Casino facilities will be developed by the MANAGER and must be approved by the NATION before the commencement of any construction. Subject to the requirements of the Compact, the Casino shall operate approximately [redacted]nd may offer such other gaming activities as are or may be authorized under the Compact, the Act, and the Ordinance, and as are agreed upon by the NATION and the MANAGER. The Casino shall be open for business seven (7) days a week, three hundred and sixty-five (365) days a year, twenty-four (24) hours a day, unless otherwise determined by the MANAGER in consultation with the NATION, or as otherwise required by law, but in no event shall the Casino be operated less than sixteen (16) hours per day.

IV. DUTIES AND RESPONSIBILITIES

In consideration of the fees and revenues to be paid by the NATION to the MANAGER, following the Approval Date, subject to the Annual Plan, and to the extent not completed under the Technical Services and Consulting Agreement executed by the parties on or about March 1,

1994 ("Technical Services Agreement"), the parties agree to perform the following duties and assume the following responsibilities, as indicated.

A. **Pre-Opening.** Pre-opening is that period of time between the Approval Date and the Commencement Date. All pre-opening expenditures shall be subject to pre-opening budget ("Budget") limitations.

1. **Pre-Opening Program and Budget.** No later than forty-five (45) days after the Approval Date, the MANAGER shall prepare and furnish to the NATION for the NATION's review and prior written approval, in the NATION's sole and absolute discretion, the pre-opening program and Budget. The MANAGER shall plan, implement, perform, and/or cause the performance of the pre-opening program to construct and prepare the Casino for opening.

2. **Pre-Opening Expenses.** The pre-opening expenses shall be paid from a bank account(s) (the "Pre-Opening Bank Account") established at a bank or banks selected by the NATION. The NATION shall deposit into the Pre-Opening Bank Account such sums at such times as shall be established by the Budget and shall maintain sufficient funds therein to pay all pre-opening expenses in accordance with monthly schedules to be prepared by the MANAGER and approved in writing by the NATION. Subject to the Budget, the MANAGER will fund all or part of the pre-opening program, if so requested by the NATION, pursuant to the loan terms and conditions described in Exhibit B hereto. The Pre-Opening Bank Account shall be in the name of the NATION, and signatures of both (a) the General Manager or another designated representative of the MANAGER, and (b) the NATION's Chairman or his designated representative shall be required to draw upon the Pre-Opening Bank Account.

3. **Pre-Opening Staff Training.** Subject to the terms of the Compact and this Agreement, the MANAGER agrees to recruit and train the staff of the Casino, either on- or off-

site, at the MANAGER's discretion. The MANAGER may use such training techniques as the MANAGER deems necessary and shall be responsible for the administration of financial matters incidental to such training and development. The salaries, out-of-pocket expenses, and other necessary expenses of all personnel shall be pre-opening expenses.

4. **Pre-Opening Advertisement.** The MANAGER shall publicize, promote, and advertise the Casino. Any costs associated with such advertising and/or promotion shall be a pre-opening expense.

5. **Initial Operating Supplies.** To the extent not previously obtained by the NATION, the MANAGER shall purchase all necessary operating supplies on behalf of the NATION as a pre-opening expense.

6. **MANAGER's Pre-Opening Standards.** The MANAGER affirmatively covenants and agrees to bring to bear all necessary resources within its reasonable control to accomplish a timely and expeditious opening. The MANAGER covenants and agrees to complete the pre-opening program in as efficient and expeditious a manner as possible consistent with the pre-opening program and Budget.

B. **Hiring of Key Personnel.** Key Personnel shall be selected by the MANAGER, subject to approval by the NATION, which approval is in the sole discretion of the NATION and is not required to be reasonable or explained, provided that the NATION's withholding of approval does not violate or cause the MANAGER to violate any applicable employment, anti-discrimination, or other laws or regulations. The three directors shall be under the supervision of the General Manager.

1. **General Manager.** A General Manager (the "General Manager") shall be responsible on behalf of the MANAGER for the day-to-day responsibilities of the MANAGER

under this Agreement, as well as for the specific responsibilities of the General Manager. The duties of the General Manager shall initially be performed by an interim general manager named by the MANAGER pending selection and hiring of the General Manager.

2. **Director of Finance**. A Director of Finance (the "Director of Finance") shall be responsible for overseeing the installation of the financial control and accounting systems.

3. **Director of Gaming**. A Director of Gaming (the "Director of Gaming") shall be responsible for overseeing the gaming operations.

4. **Director of Surveillance**. A Director of Surveillance (the "Director of Surveillance") shall be responsible for overseeing the surveillance.

C. **Supervisors and Managers**. Following the selection of the Key Personnel, the MANAGER shall begin hiring, subject to the terms of the Compact and this Agreement, qualified supervisory and managerial personnel who will be sent, as a pre-opening expense or an Operating Cost, as applicable, and as deemed reasonably necessary by the MANAGER, in its discretion, to one of the MANAGER's facilities located in Nevada to participate in the MANAGER's in-house training program.

D. **Improvements, Development, and Maintenance**.

1. **Design and Construction**. To the extent not completed under the Technical Services Agreement, the MANAGER shall procure all necessary contractors, architects, engineers, designers, equipment, and labor to design the Casino and to construct one or more new buildings and/or renovate or modify one or more existing buildings. The MANAGER also shall supervise the planning, construction, renovation, and/or modification of all aspects of construction of or improvements to the Casino, including but not limited to sufficient traffic lanes as recommended by qualified traffic consultants to ensure the safety of patrons of the Casino. The MANAGER

will consult with the NATION on all aspects of the Casino development, construction, and maintenance to ensure that the construction, design, and maintenance are reasonably satisfactory to the NATION. The MANAGER will select the architect, engineer, and general contractor through competitive bidding of experienced architects, engineers, and contractors, subject to the approval of the NATION. The MANAGER will provide the NATION with ample opportunity to review and approve the selection of any and all architects, engineers, and contractors, and to review and approve the plans of the Casino before commencement of any construction, renovation, or modification; and all costs, fees, and expenses associated with these services shall be borne exclusively by the Casino.

2. **Improvements**. The MANAGER shall use its best efforts to cause all improvements placed on the Property to be constructed in a good and workmanlike manner and in accordance with applicable laws and/or building codes. Removal or demolition of, or material alterations to, any improvements, which removal, demolition, or alteration materially and adversely alters the value of the Property and/or the businesses or activities conducted thereon, shall not be made without the prior written consent of the NATION. The MANAGER shall, at all times during the term of this Agreement and at the Casino's sole cost and expense, maintain the Property and all improvements thereon in good order and repair; in a neat, sanitary, and attractive condition; and in compliance with applicable laws, ordinances, and regulations, including but not limited to the Environmental Requirements.

3. **Performance Bonds**. Before beginning construction of any improvement on the Property, the MANAGER agrees to require the contractor responsible for such construction to provide a performance bond adequate to guarantee payment of the estimated construction cost of any such improvement and to guarantee completion of the improvement and

payment in full of claims of all persons for work performed on or materials furnished for construction. **THIS PROVISION IS NOT, AND SHALL NOT BE CONSTRUED TO BE, A WAIVER BY THE NATION OF ITS RIGHT TO HOLD ITS LANDS IN GENERAL, AND THE PROPERTY IN PARTICULAR, FREE FROM LIENS.** Prior to the commencement of any such construction, the MANAGER shall provide to the NATION evidence satisfactory to the NATION that the available funds are sufficient to pay all estimated construction costs of any such improvement. All bonds provided in compliance with this Agreement shall be furnished by companies determined by the United States Secretary of the Treasury to be acceptable sureties on federal bonds.

4. **Repairs and Maintenance.** The MANAGER shall make or cause to be made such repairs, replacements, corrections, and maintenance to and of the Property and the improvements thereon as required in the normal and ordinary course of operation of the Casino, including but not limited to the maintenance of the landscaping, parking lots, entryways, and access roads on the Property, as well as any employee parking areas, overflow parking areas, warehouses, and storage areas located elsewhere; including but not limited to cleaning, painting, decorating, plumbing, carpeting, landscaping and grounds care. In conjunction therewith, the MANAGER is authorized to make and enter into any contracts and agreements in the name of the Casino as in the MANAGER's sound business judgment are reasonably necessary for the repair and maintenance of the Casino and to cause the same to be paid when due as an Operating Cost.

E. **Operational Standards.** The MANAGER shall use reasonable measures to manage and operate the Casino in an orderly manner, and agrees to manage and operate the Casino diligently and efficiently in accordance with the Annual Plan and to maintain the following

operational standards ("Operational Standards"): (1) compliance with the terms of the Compact, the Ordinance, the Act, any and all rules, regulations and ordinances of the National Indian Gaming Commission, and any and all other applicable licenses and permits; (2) compliance with this Agreement, including but not limited to compliance with the restrictions affecting the Casino; and (3) compliance with the Annual Plan then in effect. The MANAGER agrees that it will take no intentional action in the management or operation of the Casino injurious to the NATION.

F. Daily Operations. Subject to (1) the terms and conditions of this Agreement (including without limitation the Operational Standards); (2) consultation between the NATION and the General Manager on a periodic basis and as otherwise required by the NATION; and (3) the right of the NATION to set operational policies, and with the exception of gaming policies established by the NATION's laws or ordinances in accordance with the requirements of the Compact or the Gaming Commission, the MANAGER shall have the right to determine standards of operation, quality of service, and any other matters affecting customer relations and efficient management and operation of the Casino. Subject to the foregoing, the NATION will not interfere with the exercise of any of the MANAGER's day-to-day management and operation of the Casino. Except as specifically provided otherwise in this Agreement, the MANAGER shall have the discretion and responsibility to determine the terms of patron admittance to the Casino and to set policies relating to gaming, gaming layouts and pricing, gaming mix, and rates and charges for other Casino services. The MANAGER shall in good faith use its sound business judgement to manage and operate the Casino in the best interests of both parties. Notwithstanding the above, all entertainment, food, and beverage services and pricing shall be consistent with standards set by the Annual Plan.

G. **Policy Decisions.** The NATION specifically reserves the right to make major decisions or policy determinations concerning the conduct of the Casino, including but not limited to matters involving significant changes in or additions to the games conducted by the Casino, substantial additions or renovations to the Casino, matters relating to tribal law or custom, and matters involving the possible assertion of state jurisdiction over the Casino. If the NATION and the MANAGER disagree regarding the classification of a decision as a daily operational decision, or a major decision or a policy determination, the NATION, in its sole discretion, shall decide the proper classification, provided that, if the NATION's decision with respect to such disputed or objectionable items would materially or adversely affect the MANAGER's ability to comply with the Operational Standards or gaming rules, regulations, or requirements of the Arizona State Gaming Agency, either party may submit the dispute to arbitration in accordance this Agreement.

H. **Fire and Security.** The NATION shall be responsible for providing the fire protection force to and for the Casino, and the MANAGER shall be responsible for providing the security force and any other necessary public safety services relative to the Casino. The cost of such services used by, provided for, or allocated to the Casino, as recommended by the MANAGER and approved by the NATION, shall be an operating expense of the Casino.

I. **Sales, Marketing, and Advertising.** Subject to the Annual Plan, the MANAGER shall, as an Operating Cost, advertise and promote the business of the Casino, institute and supervise a sales and marketing program in the Casino's name, and coordinate with tour programs marketed by airlines, travel agents, and government tourist departments as the MANAGER deems advisable.

J. NEPA Compliance. If applicable, the MANAGER shall provide the National Indian Gaming Commission with the information required in order for the National Indian Gaming Commission to comply with the requirements of the National Environmental Policy Act, 42 U.S.C. §§ 4321-370a) ("NEPA").

K. Logistical Support and Supplies. The MANAGER shall procure on behalf of the Casino all operating supplies, operating equipment, and other supplies as MANAGER deems reasonably necessary, including but not limited to the following items necessary to operate and maintain the Casino: (1) gaming tokens, chips, chinaware, glassware, uniforms, utensils, linens, silverware inventory; (2) all non-depreciable office supplies, stationery, matches, consumable items and supplies, including playing cards, dice, fuel, soap, foodstuffs and beverages; (3) tools and cleaning materials equipment necessary to maintain the facilities and physical plant of the Casino; and (4) maintenance and other support items necessary for the efficient and profitable management and operation of the Casino.

L. Personnel and Employment Practices.

1. Management Team. The management team of the MANAGER will be headed by a Senior Executive who shall oversee the performance of the General Manager and the management team, but who will not be located on the Property or directly responsible for the day-to-day operations of the Casino. The Senior Executive will be the MANAGER's agent, paid by the MANAGER at its own expense and its sole discretion, whose role is to interface with the NATION's Chairman or other designated representatives of the Tribal Council as reasonably required.

2. Removal of Key Personnel. If the NATION determines that reasonable cause exists to remove any of the Key Personnel, the NATION shall present its finding to the

General Manager or, if the General Manager is the subject of the removal action, to the Senior Executive or other person designated by the MANAGER, to show cause why such person should be removed. The finding shall describe with specificity the basis for determining that reasonable cause for removal exists, including but not limited to nonfeasance, malfeasance, inadequate performance, inattention to business, failure to carry out a material requirement of this Agreement, or conviction of a felony. Within ten (10) days after receipt of such finding, the General Manager or the Senior Executive, as applicable, either must remove such person or provide to the NATION a written determination explaining with specificity why the person should not be removed. If the NATION is not satisfied with that determination, it may submit the matter to arbitration as described herein. Removal of any Key Personnel shall not occur if such removal would violate any applicable employment, anti-discrimination, or other law or regulation. Nothing in this Subsection 2 is intended nor shall it be construed in any way to affect the authority of the Gaming Commission under the Tribal Gaming Ordinance.

3. **Employees.** Except as otherwise provided herein, the MANAGER shall establish and administer the employment practices of the Casino, including hiring, promotion, discharge, direction, and control of all personnel employed by the Casino in connection with its operation, maintenance, and management of the Casino. The MANAGER shall exercise such authority in accordance with the written personnel policies and procedures attached hereto. The hiring and promotion of all personnel of the Casino must comply with the employment preference provisions of the Ordinance and this Agreement. No affiliates, including but not limited to directors, officers, partners, or shareholders of, with, or in the MANAGER, other than a person who has only a minority interest in the MANAGER or an affiliate of the MANAGER, may be employed by or have a service or goods contract with or for the benefit of the Casino without the

prior written approval of the NATION. The MANAGER must provide a letter to the NATION disclosing the nature and scope of the conflict of interest, potential or actual, and requesting the NATION's approval of the proposed contract, which approval may be granted or withheld at the NATION's discretion and is not required to be reasonable or explained.

4. **Instruction and Training.** The MANAGER shall provide and direct employee instructional programs and on-the-job training for persons recruited for employment in the various work categories of the Casino operations. Such programs and training, which shall be provided on the job during the employees' normal working hours, shall be an operating cost of the Casino, shall be subject to the reasonable approval of the NATION, and shall include but not be limited to programs in work ethics and attitude orientation, cashiering, dealing, security, food handling and beverage preparation, and personnel management. Such programs and training may be conducted on- or off-site, at one of the MANAGER's other facilities, on-the-job, or by instructors at or from educational or training facilities, at the MANAGER's discretion, provided that MANAGER shall receive no additional compensation for these programs and shall be reimbursed only for the actual cost of providing such training, including costs incurred as and for salaries, equipment, travel, etc. Staff trainers will be present on-site to recruit and train employees as may be required for the efficient and effective operation of the Casino, and the MANAGER will provide such classes and training as are reasonably required to maintain the staffing of the Casino and other training courses of a kind and nature offered on an ongoing basis at its other Casino operations. Trainers will use training courses and instruction manuals to train employees who have been recruited for positions as dealers, cashiers, and security and supervisory personnel. Such training materials and courses shall be the joint property of the MANAGER and the NATION throughout the term of this Agreement and shall become the non-exclusive property

of the NATION when this Agreement is terminated or expires, provided that the MANAGER retains all rights to use and continue to use training materials and courses provided by it to the NATION.

5. Tribal Employment and (Sub)Contracting Preference.

a. Employment. Consistent with personnel policies established for the Casino, the MANAGER will give preference in recruiting, training, and employment to qualified members of the NATION and their spouses and children who are duly licensed by the Gaming Commission to perform the relevant services and who otherwise meet the employment criteria of the MANAGER applicable to all of its gaming employees, in all job categories of the Casino, including but not limited to management positions. Where such tribal members and their spouses or children are unavailable, the MANAGER will give preference to other Native Americans. To implement the primary preference for members of the NATION and their spouses and children and secondary preference for other Native Americans, the MANAGER will: (i) list all job openings with the Tribal Employment Rights Office and at least one newspaper of general circulation in the area of the Reservation; (ii) clearly specify in all job advertisements the preference for NATION members and Native Americans; (iii) advertise job openings in at least one publication with a wide distribution among tribal members; and (iv) at least annually, advertise job openings in conjunction with a regional or state-wide gathering of Native Americans. This job advertising policy will not apply to job openings filled internally from the existing staff of the Casino or job openings that require an immediate replacement when, based on the MANAGER's reasonable determination, the job search technique will be too time consuming to fill the required opening effectively.

b. (Sub)contractors. Preference will be given in awarding (sub)contracts to firms owned or controlled by tribal members of the NATION and their spouses and children, and then to other Native Americans, who are duly licensed by the Gaming Commission to perform the relevant services or provide the relevant goods, if they otherwise meet

the criteria of the MANAGER. The MANAGER will, subject to consultation with the NATION, retain the right to determine whether an individual or firm is qualified and whether the contract cost or required wage among competing firms and individuals is comparable on both a qualitative and a quantitative basis consistent with standards applicable to all other suppliers of goods and services.

M. Financial Management Practices, and Reporting Requirements. The MANAGER shall establish and follow professional financial management and accounting and reporting systems and procedures on behalf of the Casino consistent with 25 C.F.R. § 531.1(c)(1)-(6), which shall include but not be limited to systems and procedures that shall: (1) Include an adequate system of internal accounting controls; (2) Permit the preparation of financial statements in accordance with generally accepted accounting principles; (3) Be susceptible to audit; (4) Allow a class II gaming operation, the tribe, and the Commission to calculate the annual fee under § 514.1 of this chapter; (5) Permit the calculation and payment of the manager's fee; and (6) Provide for the allocation of operating expenses or overhead expenses among the tribe, the tribal gaming operation, the contractor, and any other user of shared facilities and services. Such systems and procedures also shall include but not be limited to systems and procedures necessary to compute annual fees payable to the National Indian Gaming Commission pursuant to 25 C.F.R. § 514.1. The MANAGER will install systems for the monitoring of all funds, a description of which systems shall be submitted to the Gaming Commission for approval before installation. To ensure that the NATION has full access to all financial and accounting information concerning the Casino, the NATION may require that a qualified Tribal Auditor and a qualified Tribal Inspector will be hired and paid as employees of the Casino, but who will report solely to the NATION and be under the exclusive supervision and control of the NATION. The Tribal Auditor and Tribal

Inspector and members of the Gaming Commission shall have full and unrestricted access to the Casino and to the books and records of the Casino at any time.

1. Collection of Revenues by the MANAGER. The MANAGER shall collect, receive, and account for all Gross Receipts and shall deposit all such receipts into an interest-bearing account for the NATION ("Gross Receipts Account"). Such Gross Receipts Account shall contain only such Gross Receipts. The Account shall be maintained in one or more national banking institutions, deposits in which are insured by the Federal Deposit Insurance Corporation, which depositaries shall be selected by the NATION in consultation with the MANAGER.

2. Payment of Operating Costs. The MANAGER shall pay or cause to be paid all Operating Costs from the Gross Receipts Account. All Operating Costs shall be withdrawn from the Gross Receipts Account by consecutively numbered checks duly signed by an official or officials thereof designated by the NATION, payable to a specific person or company in accordance with policies as set by the NATION. No check shall be drawn to "cash" or a fictitious payee. Any amount remaining in the Gross Receipts Account at the end of any calendar month after payment of Operating Costs are Net Revenues.

3. Cash Management System. The MANAGER shall cause a Certified Public Accountant, approved in writing by the NATION, to review the system of internal controls and, if necessary in the opinion of the Certified Public Accountant, to recommend a system of handling and recording cash receipts of the Casino. Based on such recommendations, the NATION and the MANAGER shall agree upon and implement a cash handling system prior to the Commencement Date to ensure that the receipts of the Casino are recorded accurately on the books of account of the Casino. The NATION through its designated agent or official may review all books, records, employees, and documents necessary to ensure the completeness and

accuracy of books of account and related records. No cash payments will be made to the MANAGER under any circumstances. All daily cash receipts shall be properly recorded and reconciled for accuracy at the close of each business day by the MANAGER in accordance with the approved cash management system. The financial practices and reporting requirements shall be developed and reduced to writing by the MANAGER, approved by the NATION, and followed and enforced unless and until modified by mutual written agreement of the parties. A daily report of cash receipts and payouts will be completed each day, along with the daily deposit or deposits. The NATION or its designated agent or official may verify the deposits and the Gross Receipts Account. A daily summary sheet showing all receipts, cash, and deposits (shown in dollars and cents) and all payments from all activities conducted at the Casino shall be recorded, and the person reconciling such summary sheet shall affix his or her signature to certify the truth and accuracy of the summary sheet. Copies of the daily summary sheet shall be provided to the NATION and the NATION's Gaming Commission. A check register for the Gross Receipts Account shall be maintained by the MANAGER and shall be balanced daily.

4. **Financial Reports.**

a. On or before the twentieth day of each month, the MANAGER shall furnish to the NATION and the Gaming Commission a financial report certified by the MANAGER's Director of Finance for the preceding calendar month prepared in accordance with Generally Accepted Accounting Principles, showing (i) the Gross Receipts, (ii) the Operating Costs incurred or paid, (iii) the specific categories and classifications of such receipts and costs, allocated between Non-Gaming Activities and Gaming Activities, and (iv) the Net Revenues. The monthly report shall provide sufficient information and detail to allow it to be used to determine the Net Revenues attributable to Non-Gaming Activities and Gaming Activities, respectively, and

to calculate the management fee. Such reports shall also be furnished on a quarterly and annual fiscal year basis.

b. The NATION and the National Indian Gaming Commission shall be entitled, at any time within one (1) year after the end of the fiscal year in which became due the NATION's share of Net Revenues, to question the sufficiency of the amount thereof and/or the accuracy of the report(s) furnished by the MANAGER to justify the same, and shall have the right to examine and/or audit as provided herein. The MANAGER shall, for these periods of time, or such longer period as is required by law, or pursuant to industry standards, whichever is longer, keep safe and intact all of the books, documents, papers, records, and tax returns of the Casino to which the NATION has the right of examination and/or audit pursuant to this Agreement.

c. The MANAGER shall maintain full and accurate books of account and related records at the Casino showing the condition of the Casino, and all such books of account and related records shall be preserved and maintained throughout the term of this Agreement. Such books of account and related records shall provide for the allocation of Operating Costs among the Casino facilities and services, as related to both Non-Gaming Activities and Gaming Activities, to enable accurate calculation of Net Revenues attributable, respectively, to Non-Gaming Activities and Gaming Activities. Books of account and related records are the property of the NATION and shall be maintained according to generally accepted accounting principles consistently applied. The MANAGER shall provide the NATION, its Tribal Auditor, its Tribal Inspector, and its Gaming Commission with access to the Casino's books of account, tax, bank, and related records and shall allow them to examine such books of account and related records without notice at any time. Such right may be exercised through an agent,

employee, or Certified Public Accountant designated by the NATION or its Gaming Commission.

d. The financial books and records shall record income and expenses allocable to Gaming Activities separately from income and expenses allocable to Non-Gaming Activities. The sole purpose of recording the revenues and expenses from Gaming Activities and Non-Gaming Activities separately is to provide a means by which it can be determined whether the amount of money received by the MANAGER from Gaming Activities complies with the requirements of the Act.

5. **Annual Audit**. The NATION shall cause to be conducted by a nationally recognized Certified Public Accounting firm, employed and approved by the NATION, an annual independent audit of all gaming and related operations of the Casino. Within one hundred and twenty (120) days of the close of the Casino's fiscal year, the NATION shall deliver a copy of every such audit to the Tribal Council of the NATION, the Gaming Commission, the National Indian Gaming Commission, and the state entity identified in the Compact, all in accordance with all applicable federal and tribal laws and regulations and the Compact. The MANAGER shall be responsible for and shall take immediate steps to correct any and all discrepancies, material reportable conditions, or qualifying exceptions revealed by any such audit which are within its purview as MANAGER pursuant to this Agreement. If any such audit performed pursuant to this Agreement reveals that the NATION has been paid less than [redacted] of the amount of Net Revenues to which the NATION is entitled for the period covered by the audit and such difference is not then maintained in accounts of the Casino, then the expense of such audit shall be borne by the MANAGER; otherwise, the expense of such audit will be borne by the Casino as an Operating Cost.

64

6. **Audit of Contracts.** At the request of the NATION or the NATION's Gaming Commission, the MANAGER shall cause to be conducted by a Certified Public Accountant, approved in writing by the NATION, an audit of any contract by or on behalf of the Casino for supplies, services, or merchandise [redacted] 6c/ [redacted] contracts for professional legal or accounting services.

N. **Compliance with Internal Revenue Code.** The MANAGER shall maintain a permanent record containing the name and address of each player who receives a prize if and as required by and in accordance with the Internal Revenue Code, and shall otherwise comply with all applicable provisions of the Code.

O. **Insurance.**

1. **Coverages.** The MANAGER, at all times at the expense of the Casino, shall obtain and keep in force, or cause to be provided or kept in force, in the name of the NATION: (a) such insurance as the NATION, from time to time, may reasonably require, in companies, form, amounts, and with such other provisions and for such periods as are mutually agreeable to the NATION and the MANAGER, to protect against loss or damage to the Property and/or any improvements thereon, which loss or damage results from or is caused by fire and such other hazards, casualties, and contingencies; (b) comprehensive general public liability and property insurance covering the Casino in companies, form, amounts, and with such other provisions as are reasonably satisfactory to the NATION, [redacted] 6c/ [redacted] and such liability policies must comply with such limits of insurance as may be required by applicable laws or regulations; (c) business interruption insurance; and (d) such other insurance as reasonably may be required by the laws or regulations

of the NATION and the National Indian Gaming Commission (collectively, "Policies").

2. **Standards and Insured Parties.** All Policies shall be furnished and maintained by such responsible companies as are rated A-Plus or better in the current edition of Best's Insurance Guide, provided a company so rated is available to write the required coverage at a commercially reasonable premium. Any exception to this standard shall, however, be subject to prior approval of the NATION. Any and all proceeds from any such Policies shall be distributed, used, and/or otherwise disposed of pursuant to the terms of such Policies and of this Agreement. The Policies shall be reviewed annually by the MANAGER in consultation with the NATION for adequacy, and the coverage adjusted to accommodate for increased risk factors and to reflect annual increases in the Consumer Price Index as posted by the United States Department of Labor statistics. Such Policies shall designate the NATION as the insured and the United States and/or the MANAGER as additional named insureds and loss payees, as applicable, as their respective interests may appear, and as required by law. The MANAGER shall furnish to the NATION certificates of such Policies within thirty (30) days after the Approval Date.

3. **Cancellation of Certificates and Policies.** The Policies shall be issued by a company or companies authorized to do insurance business in the State of Arizona, with a copy to be provided by the MANAGER to the NATION. The Policies will provide that the Policies will not be cancelled, terminated, suspended, or modified by the insurer without first giving the NATION and the MANAGER at least sixty (60) days prior written notice before any such cancellation, termination, suspension, or modification shall become effective. The MANAGER will deliver to the NATION certificates of insurance not more than thirty (30) days after the Policies go into effect, and shall deliver to the NATION certificates of renewal insurance not less

than sixty (60) days prior to the respective dates of expiration of the Policies, unless the MANAGER shall have been unable after a good faith effort to secure insurance policies or renewals within such time frame, in which case the MANAGER shall continue its efforts to secure required insurance and shall provide any certificates to the NATION promptly following receipt thereof by the MANAGER.

4. **Loss and Damage.**

a. If any act or occurrence of any kind or nature (including any casualty for which insurance is not in effect) shall result in substantial damage to or substantial loss or destruction of the Property and/or any of the businesses or improvements thereon or part thereof, and the MANAGER has knowledge of such act or occurrence and damage, loss, or destruction, the MANAGER agrees to and shall give immediate notice thereof to the NATION.

b. For purposes of this Subsection 4 and of Article VI(C), "Guaranteed Minimum Payment to the Nation," a "substantial damage" or "substantial loss" is a damage or loss that (a) is required by any of the Policies to be reported to the insurance company in order for coverage to be effective, (b) is required by law to be reported, or (c) impacts [redacted] or more of the Casino or would not be repairable within ninety (90) days after commencement of repairs or restoration. If damage or loss occurs that is less than substantial as above defined, the NATION shall promptly commence and continue diligently to complete the restoration, repair, replacement, and reconstruction of the Property or any improvements thereon.

c. In the event of a substantial damage or loss, and if insurance proceeds from the Policies are sufficient for such purpose, or the NATION is able and willing to supplement insufficient insurance proceeds so that the amounts available are sufficient for such purpose, then the NATION will promptly commence and continue diligently to complete the

restoration, repair, replacement, and reconstruction of any damage to the Property and/or the improvements thereon and shall have full use of such proceeds for such purpose.

d. In the event of a substantial damage or loss, and if insurance proceeds from the Policies are insufficient for the restoration, repair, replacement, and reconstruction of damage to the Property and/or improvements thereon, and the NATION is unable or unwilling to supplement such insurance proceeds, then the NATION shall retain and own all proceeds of Policies, any outstanding loans from MANAGER shall be repaid to MANAGER, and this Agreement shall be immediately terminated by mutual consent of the NATION and the MANAGER, which consent is hereby irrevocably given; provided that, if within [redacted] after the substantial damage or loss, the NATION shall recommence the Casino business and activities, the MANAGER shall have the right, at its sole option, to declare this Agreement once again in full force and effect, the parties consent to such reinstatement, and that consent is hereby irrevocably given. In the event of such reinstatement, the term of the Agreement shall be extended for a period equal to the period of the abeyance of the Agreement resulting from such earlier termination.

5. **Subrogation.** All Policies shall contain a specific waiver of subrogation reflecting the parties' agreements as more fully described in Article IV(T).

P. **Casino Finance Package.** Subject to any applicable terms and conditions of the Compact, the MANAGER will provide, or arrange for third parties to provide all or portions of, financing up to [redacted] to construct, develop, equip, and provide the working capital for operation of the Casino facilities on the Property, based upon plans mutually agreed between the NATION and the MANAGER, but in no case shall the MANAGER advance any funds until the Approval

Date. The MANAGER agrees, upon request by the NATION, to provide such financing up to, but not in excess of, the amount above stated, to the NATION through a direct loan from the MANAGER, pursuant to the loan terms and conditions described in Exhibit C hereto, or from third parties on substantially identical terms or on terms otherwise acceptable to the NATION.

Q. MANAGER's Representations and Warranties. The MANAGER hereby represents and warrants as follows:

1. The MANAGER has the right, the corporate power, and the authorization (a) to enter into this Agreement and (b) to perform each of its obligations hereunder.

2. The execution and delivery by the MANAGER of this Agreement, and performance of its obligations thereunder, have been duly and properly authorized by all necessary action, and such execution, delivery, and performance will not contravene or violate any provision of law or any valid agreements to which the MANAGER is a party. Each and all persons executing this Agreement on behalf of the MANAGER have been duly authorized to execute and deliver such document on behalf of the MANAGER pursuant to its organizational documents and all applicable law.

3. This Agreement has been duly and validly executed and delivered by the MANAGER and constitutes the valid, legally binding obligation of the MANAGER.

4. There are no claims or litigation, pending or threatened, known to the MANAGER, that could materially and adversely affect this Agreement or the MANAGER's ability to perform any of its obligations under this Agreement; nor is there any basis known to the MANAGER for any unfavorable decision, ruling, or finding that would materially, adversely affect the validity of this Agreement, or that might result in any material adverse change in the condition of the MANAGER.

5. All written representations and warranties made by the MANAGER and/or its officers and agents in connection with this Agreement (a) were true, correct, and complete in all material respects when furnished to the NATION as of the date made; and (b) are true, correct, and complete in all material respects as of the date on which this Agreement is executed.

6. Performance by the MANAGER of its obligations under and compliance by the MANAGER with this Agreement will not, to MANAGER's best knowledge, violate any existing federal or state law, and will not violate any other instrument or agreement binding upon the MANAGER; and will not result in the imposition of any lien, charge, or encumbrance of any nature on any of the MANAGER's assets or property.

7. There are no outstanding liens, garnishments, or judgments against the MANAGER.

8. There are no claims, liens, encumbrances, or other restrictions against the MANAGER that result from liabilities arising under applicable environmental laws, including but not limited to the Environmental Requirements.

9. To the MANAGER's best knowledge, the MANAGER is in compliance with all applicable laws, including but not limited to the Environmental Requirements.

10. The MANAGER has not been involved in the generation, manufacture, storage, transportation, treatment, handling, release, disposal, production, use, or processing of any Hazardous Waste (other than De Minimis Amounts) except in compliance with applicable laws, including but not limited to the Environmental Requirements.

11. The MANAGER will not keep, store, or use underground storage tanks ("USTs") on the Property.

12. The MANAGER is not prohibited from entering into this Agreement by

any valid agreement or other writing known to the MANAGER or by federal or state law or regulation.

13. The MANAGER is solvent and has not filed a petition for bankruptcy.

14. The MANAGER is not operating, and has not operated under or used any other name or assumed name, except [redacted] 66

15. No written certificate or statement delivered or made by the MANAGER in connection with this Agreement contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements, representations, or warranties contained in this Agreement from being misleading.

16. The MANAGER's organizational documents each have been duly adopted consistent with all applicable law and have been amended pursuant to the terms thereof and consistent with all applicable law.

R. NATION's Representations and Warranties. The NATION hereby represents and warrants as follows:

1. The NATION has the right, power, and authorization (a) to enter into this Agreement and (b) to perform each of its obligations hereunder.

2. The execution and delivery by the NATION of this Agreement, and performance of its obligations thereunder, have been duly and properly authorized by all necessary action, and such execution, delivery, and performance will not contravene or violate any provision of law or any valid agreements to which the NATION is a party. Each and all persons executing this Agreement on behalf of the NATION have been duly authorized to execute and deliver such document on behalf of the NATION pursuant to its organizational documents and

all applicable law.

3. This Agreement has been duly and validly executed and delivered by the NATION and constitutes the valid, legally binding obligation of the NATION.

4. Other than the suit filed by Arizona dogtrack owners challenging the legitimacy of all Indian gaming compacts in Arizona and the suit filed by tribal members challenging the authority of the Tribal Council to execute this Agreement, and to the best of NATION's knowledge, there are no claims or litigation, pending or threatened, that could materially and adversely affect this Agreement or the NATION's ability to perform any of its obligations under this Agreement; nor is there any basis known to the NATION for any unfavorable decision, ruling, or finding that would materially, adversely affect the validity of this Agreement, or that might result in any material adverse change in the condition of the NATION.

5. All written representations and warranties made by the NATION and/or its officers and agents in connection with this Agreement (a) were true, correct, and complete in all material respects when furnished to the MANAGER as of the date made; and (b) are true, correct, and complete in all material respects as of the date on which this Agreement is executed.

6. Performance by the NATION of its obligations under and compliance by the NATION with this Agreement will not violate any existing federal or state law, or any other instrument or agreement binding upon the NATION; and will not result in the imposition of any lien, charge, or encumbrance of any nature on any of the NATION's assets or property.

7. There are no outstanding liens, garnishments, or judgments against the NATION that would interfere with or prevent the performance of this Agreement by the NATION, or the use of the Property for the purposes herein described.

8. To the NATION's best knowledge, and without having the benefit of an

environmental assessment, the NATION is in compliance with all applicable laws, including but not limited to the Environmental Requirements, and there is not present on the Property any asbestos, polychlorinated biphenyls ("PCBs"), petroleum hydrocarbons, urea formaldehyde foam insulation, or radon gas, except in De Minimis Amounts.

9. The NATION has received no notice, order, or other communication of any alleged or potential violation or, or failure to comply with, applicable laws, including but not limited to the Environmental Requirements.

10. The NATION has not been involved in the generation, manufacture, storage, transportation, treatment, handling, release, disposal, production, use, or processing of any Hazardous Waste (other than De Minimis Amounts) except in compliance with applicable laws, including but not limited to the Environmental Requirements.

11. No underground storage tanks ("USTs") are currently kept, stored, or used on the Property, nor have any USTs been kept, stored, or used on the Property.

12. The NATION is not prohibited from entering into this Agreement by any valid agreement or other writing known to the NATION or by federal or tribal law or regulation.

13. The NATION is solvent and has not filed a petition for bankruptcy.

14. No written certificate or statement delivered or made by the NATION in connection with this Agreement contains any untrue statement of a material fact or fails to state any material fact necessary to keep the statements, representations, or warranties contained in this Agreement from being misleading.

15. The NATION's gaming documents each have been duly adopted consistent with all applicable law and have been amended pursuant to the terms thereof and consistent with all applicable law.

S. **Prohibited Use of Property.** The MANAGER agrees that no part of the Property will be used as an open dump or for the handling, recycling, treatment, composting, or disposal of Hazardous Waste (other than De Minimis Amounts), on either a permanent or temporary basis. The MANAGER shall not cause, arrange for, or knowingly permit any Hazardous Waste to be delivered, received, accepted, used, stored, released, generated, transported, handled, processed, treated, reduced, separated, recovered, converted, recycled, transferred, or disposed of on, to, or in the Property by the MANAGER, its employees, contractors, invitees, or any other persons, and the NATION's refusal to consent to such is considered and adamant and shall not be deemed to be unreasonable, notwithstanding anything herein to the contrary; provided however, that the MANAGER may take such actions as may reasonably be necessary to divert Hazardous Waste inadvertently delivered to or brought onto the Property to safe and lawful disposal elsewhere. **THIS RESTRICTION IS A MATERIAL CONDITION OF THIS AGREEMENT, AND, WITHOUT THE AGREEMENT TO COMPLY WITH SUCH RESTRICTION, THE NATION WOULD NOT HAVE ENTERED INTO THIS AGREEMENT.**

T. **Indemnification.**

1. **Hazardous Waste--MANAGER.** If, during the term of this Agreement, the MANAGER causes, arranges for, or knowingly permits Hazardous Waste to be discharged, delivered, received, accepted, used, stored, released, generated, transported, handled, processed, treated, reduced, separated, recovered, converted, recycled, transferred, or disposed of on, to, or in the Property in violation of the Environmental Requirements, or if the Property becomes contaminated by Hazardous Waste as the result of the MANAGER's knowing acts or omissions, the MANAGER shall indemnify and hold harmless the NATION from any and all Environmental Damages. Without limiting the foregoing, if the MANAGER causes, arranges for, or permits the

presence of any Hazardous Waste on the Property that results in a threatened or actual contamination, the MANAGER shall promptly, at its sole expense and responsibility, take any and all necessary actions to return the Property to a safe and acceptable condition as close as reasonably possible to that existing prior to the presence of any such threatened or actual contamination, pursuant to the rules and regulations of the NATION and of the United States.

The MANAGER shall not release, discharge, leak, or emit, or permit to be released, discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or water, above, on, or under the Property, if such release, discharge, leak, or emission causes or reasonably could cause the MANAGER or the NATION to be liable for Environmental Damages.

2. Hazardous Waste--NATION. If, during the term of this Agreement, the NATION causes, arranges for, or knowingly permits Hazardous Waste to be discharged, delivered, received, accepted, used, stored, released, generated, transported, handled, processed, treated, reduced, separated, recovered, converted, recycled, transferred, or disposed of on, to, or in the Property in violation of the Environmental Requirements, or if the Property becomes contaminated by Hazardous Waste as the result of the NATION's knowing acts or omissions, the NATION shall indemnify and hold harmless the MANAGER from any and all Environmental Damages. Without limiting the foregoing, if the NATION causes, arranges for, or permits the presence of any Hazardous Waste on the Property that results in a threatened or actual contamination, the NATION shall promptly, at its sole expense and responsibility, take any and all necessary actions to return the Property to a safe and acceptable condition as close as reasonably possible to that existing prior to the presence of any such threatened or actual contamination, pursuant to the rules and regulations of the NATION and of the United States.

The NATION shall not release, discharge, leak, or emit, or permit to be released, discharged, leaked, or emitted, any material into the atmosphere, ground, sewer system, or water, above, on, or under the Property, if such release, discharge, leak, or emission causes or reasonably could cause the MANAGER or the NATION to be liable for Environmental Damages.

3. **Notice of Discharge.** The indemnifying party shall provide the indemnitee with prompt written notice of (a) any discharge, spill, release, or threat of spill or release of any Hazardous Waste on, in, under, or affecting the Property, or emanating therefrom, (b) its receipt of any third party or governmental communication or notice in connection with any Hazardous Waste on, in, under, or affecting, the Property or emanating therefrom or migrating or threatening to migrate to or from the Property, including but not limited to communications or notices that either party to this Agreement has been designated as a potentially responsible party ("PRP") in connection with any state or federal superfund list, or has received a Section 104(E) or similar letter from EPA requesting information regarding the Property, (c) its notice or knowledge of a lawsuit or threat of suit against any party, or concerning the Property whether initiated by a governmental agency or authority or by a third party, and (d) any known violation of the Environmental Requirements. Such communication or notice shall be accompanied by a description of indemnitor's proposed actions to remedy such situation and a schedule therefor.

The requirement to indemnify arises (a) upon demand for such by the indemnitee, or (b) when a Hazardous Waste is released or is threatened to be released, on, in, under, or affecting the Property, or emanates therefrom or migrates or threatens to migrate to or from the Property, in violation of any Environmental Requirements for which the indemnitor is responsible under this Agreement.

4. Claims and Liabilities--MANAGER. The MANAGER agrees to and shall protect, indemnify, exculpate, exonerate, hold harmless, and defend, and hereby releases the NATION and the United States, and their directors, officers, Tribal Council members, agents, attorneys, and employees, from and against any and all claims, complaints, demands, penalties, settlements, fines, damages, liability (including but not limited to strict liability), loss, costs, and expense for any loss, damage, or injury of any kind or nature, known or unknown, contingent or otherwise, threatened or actual, to the property of the NATION, the property of the MANAGER, or to the person or property or any other person, that may be caused by the willful or negligent acts or omissions of the MANAGER, except as specifically provided otherwise in this Agreement.

5. Claims and Liabilities--NATION. The NATION agrees to and shall protect, indemnify, exculpate, exonerate, hold harmless, and defend, and hereby releases the MANAGER and its officers, directors, agents, and employees, from and against any and all claims, complaints, demands, penalties, settlements, fines, damages, liability (including but not limited to strict liability), loss, costs, and expense for any loss, damage, or injury of any kind or nature, known or unknown, contingent or otherwise, threatened or actual, to the property of the MANAGER, the property of the NATION, or to the person or property of any other person, that may be caused by the willful or negligent acts or omissions of the NATION, except as specifically provided otherwise in this Agreement.

6. Claims Covered by Insurance. Notwithstanding any provision above that may be construed to the contrary, to the extent covered by insurance, the MANAGER and the NATION each waives, releases, and discharges the other from any and all claims and demands that each may have or acquire against the other, or against each other's directors, Tribal Council

members, officers, agents, or employees, with respect to any claim as described hereinabove, for any loss, damage, liability, or expense incurred or sustained by either of them for injury to persons or damage to property or business arising out of or related to, directly or indirectly, the Property or the ownership, management, operation, or maintenance of the Casino, regardless of whether such claim or demand may arise because of the fault or negligence of the other party or its directors, Tribal Council members, officers, agents, or employees. Except to the extent a loss, damage, liability, or expense is a result of the other party's negligence or intentional acts or omissions and is not covered by insurance, in the event of any such loss, damage, liability, or expense, the NATION and the MANAGER shall look to the insurance maintained in accordance with this Agreement and shall not make any claim or seek any recovery against the other party. Each policy of insurance maintained with respect to the Casino shall contain a specific waiver of subrogation reflecting the provisions of this subsection and a provision to the effect that the existence of the preceding waiver shall not affect the validity of any such policy or the obligation of the insurer to pay the full amount of any covered loss sustained.

7. **Survival of Indemnifications.** The indemnifying parties each agree that the indemnifications shall survive this Agreement and shall continue for such period of time as required in order to be effective, but in no event shall such indemnifications be construed to cover acts or omissions of other persons that occur on the Property after the date of termination or cancellation of this Agreement.

8. **Admissions and Settlement.** No undertaking to indemnify shall constitute, nor shall it be construed to constitute, an admission of responsibility. Without negating or diminishing the promises to indemnify, the indemnitee shall be permitted to participate in any settlement negotiations that could result in civil or criminal penalties, damages, or injunctive relief

against the indemnitee, its officers, directors, Tribal Council members, employees, agents, or attorneys. In addition, the indemnitee must consent in writing to any settlement the indemnitor may make pursuant to this Agreement, which consent shall not be unreasonably withheld.

U. **Educational Assistance.** Commencing twelve (12) months after the Approval Date, and during the term of this Agreement, the MANAGER will provide full tuition scholarships up to an aggregate maximum per year of [redacted] to pursue a degree in business management at two- or four-year institutions of higher learning. The scholarship recipients will be chosen by the MANAGER and approved by the NATION. Preference will be given to Casino employees with demonstrated leadership ability and a willingness to return to the Casino.

V. ENCUMBRANCING PROHIBITED

The parties hereby specifically warrant and represent that they will not act in any way whatsoever, either directly or indirectly, to cause any person to become an encumbrancer of the Property or the Casino, exclusive of any real property of the NATION, without the prior written consent of both parties, which consent may be granted or withheld by either party at its sole discretion and is not required to be reasonable or explained.

VI. COMPENSATION

A. **Initial Lump Sum Advance.** Following execution of this Agreement, and upon the granting by the state and Gaming Commission of any permit approval or license required as a condition precedent to the making of such payment, the MANAGER will pay to the NATION [redacted] to provide funds for the NATION to pay for tribal

development costs and expenses, such payment to be funded by a direct payment [redacted] Another payment of [redacted] was previously made in accordance with the Technical Services Agreement and provided additional funds to the NATION for tribal development costs and expenses. If the NATION breaches this Agreement prior to final action by the National Indian Gaming Commission, or if the National Indian Gaming Commission fails to approve the Agreement for any reason other than for the MANAGER's own acts or omissions, the NATION shall be obligated immediately to return the [redacted] to the MANAGER. Upon the approval of this Agreement by the National Indian Gaming Commission, the MANAGER shall pay to the NATION the additional amount of [redacted]

B. Guaranteed Minimum Payment to the Nation. Notwithstanding any other provision of this Agreement, regardless of the financial condition of the MANAGER or the Casino, and subject to the last sentence of this Subsection (B), following the first full month of operation after the Commencement Date or Approval Date, whichever is later, the NATION shall receive a guaranteed minimum payment of [redacted] which minimum payment is guaranteed as an advance against future Net Revenues by the MANAGER and its parent company, Griffith Gaming, Inc. ("GGI"), as evidenced by the continuing guarantee, an executed copy of which is attached hereto as Exhibit D and incorporated herein by reference. The payment will be paid on the 20th day of each month. If, when due, adequate funds for the guaranteed minimum payment are not available from Net Revenues, the remaining amounts will be paid first from Net Revenues, if available, then by the MANAGER or GGI to the extent any deficiency exists after exhaustion of the credits above described.

Notwithstanding the foregoing, if, for three (3) consecutive months, the funds for the guaranteed minimum payment are not available from Net Revenues, even after application of any credits as calculated above, then, at the end of the third month, the MANAGER shall have the right to terminate this Agreement without further liability and the Guarantee of GGI shall be released and terminated concurrently with the termination of this Agreement. If the MANAGER or GGI is required to and does make guaranteed minimum payment(s) from its own funds due to a shortage of available funds from Net Revenues, such payments shall be repaid to the MANAGER or GGI, as applicable, from Net Revenues if, during any following months excess funds remain from Net Revenues after payment of the guaranteed [redacted] 64 [redacted] Such repayments from Net Revenues shall be made until the entire amount paid by the MANAGER or GGI under this Subsection (B) has been repaid. In the event of a substantial loss or substantial damages, as defined in Article IV(O)(4)(b), *the guaranteed minimum payment shall be abated, except to the extent the guaranteed payment or any available portion thereof shall be paid from the proceeds of a business interruption insurance policy. The NATION shall receive the guaranteed minimum payment calculated in accordance with Exhibit E attached hereto.

C. **Calculation and Payment of Management Fee and NATION's Share of Net Revenue.** Following the first full month of operation after the Commencement Date or Approval Date, whichever is later, and on the 20th day of each month thereafter, a management fee will be paid to the MANAGER in consideration of its performance under the Agreement. The fee will be calculated by determining the Net Revenue for the previous month and multiplying it be the appropriate percentage, as provided below. The fee will be calculated in accordance with the schedule attached hereto as Exhibit F. The NATION's share of Net Revenues will be calculated

*such that no gaming is conducted at the facility,

by subtracting the MANAGER's management fee from Net Revenues, but in no event shall the NATION be paid less than the monthly guaranteed payment.

After the MANAGER's fee and the NATION's share of Net Revenue has been determined, but before the funds have been distributed to the parties, principal payments on indebtedness incurred for the development, operation, operation, or maintenance of the Casino shall be paid. The MANAGER's fee shall be reduced by an amount equal to the amount of the repayment of principal due in that month on a maximum [redacted] 64 of the total indebtedness of the NATION times the percentage used to calculate the MANAGER's fee in that month. The NATION's share of Net Revenue or the guaranteed minimum payment, whichever is applicable, shall be reduced by an amount equal to the amount of the repayment of principal due in that month minus the amount by which the MANAGER's fee is reduced pursuant to the preceding sentence.

For the first quarter, the management fee will be calculated [redacted] 64 The fee will be reviewed thereafter at the end of each quarter, and the appropriate percentage will be used during the next quarter. Because payments being made throughout the year will not necessarily be identical to payments due at the end of the year, adjustments shall be calculated and made at the end of the fiscal year following completion of the annual audit, based on certified financial statements for the fiscal year, or such shorter operating period as may be applicable if operations are conducted for less than a full fiscal year.

The percentages are not to be applied incrementally but are to be applied to the "first dollar" of Net Revenues [redacted] 64

If Annual Net Revenues Are Between: The Management Fee Is:

[redacted]

6c

The NATION will receive an annual credit against the management fee, which credit will reduce the management fee by [redacted]

6c

D. **Planning and Development Assistance.** The MANAGER will pay without reimbursement from the Approval Date until the Commencement Date, but in no event for longer than six (6) months, the salaries of seven tribal members selected by the MANAGER and approved by the NATION, which members were displaced by the closing of the Visitors Center, to provide assistance in the planning and development of the Casino. If, however, such tribal members are employed in or by a temporary casino, their salary will be paid by the temporary

casino. The salary for each tribal member shall be in accordance with the skills involved in performing the work in the function assigned, including work at the Temporary Casino, but in no case will the aggregate salaries paid exceed [redacted]

VII. ANNUAL PLAN

Not less than sixty (60) days prior to the Commencement Date, and not less than sixty (60) days prior to the commencement of each full fiscal year thereafter, the MANAGER shall submit to the NATION for its approval a proposed Annual Plan. The NATION or a representative of the NATION will meet with the MANAGER within fifteen (15) days after the date on which the proposed Annual Plan is delivered to discuss the details of the Annual Plan.

The Annual Plan will be subject to the approval of the NATION, which shall not be unreasonably withheld or delayed. It is the intention of the parties to complete the review and approval of a proposed Annual Plan no later than forty-five (45) days after its initial delivery to the NATION. The NATION shall be required to approve or disapprove each proposed Annual Plan in writing within thirty (30) days after the date the MANAGER and the NATION have met to discuss each such proposed Annual Plan. Any notice that disapproves a proposed Annual Plan must contain specific objections thereto in reasonable detail. If the NATION disapproves or raises any objection to any item contained in a proposed Annual Plan or any revision thereto, the MANAGER and the NATION shall cooperate with each other in good faith to discuss and resolve the disputed or objectionable proposed items.

The MANAGER may amend the Annual Plan from time to time to reflect any unanticipated significant changes, variables, or events or to include significant additional unanticipated items of income or expense. Any such revision shall be submitted to the NATION

for approval in accordance with the procedures for review and approval of the Annual Plan described above.

On a quarterly basis, or on a monthly basis if requested by the NATION, the MANAGER shall meet with a representative of the NATION to discuss the performance of the Casino over the prior quarter or month, as appropriate, and the MANAGER's plans and expectations for the ensuing quarter or month, as appropriate. The MANAGER shall be permitted to reallocate part or all of the amount budgeted with respect to any line item of the Annual Plan to another line item in the same budget category, but may not reallocate from one category to another category without the consent of the NATION.

Upon approval by the NATION of the Annual Plan, which approval shall not be unreasonably withheld or delayed, the MANAGER shall abide by and follow that Annual Plan and shall not exceed it by more [redacted] unless approved in writing in advance by the NATION. If the MANAGER permits the Operating Costs to exceed such costs in the Annual Plan by [redacted] without the prior written approval of the NATION, it shall be deemed a default and a breach of this Agreement, and the NATION may terminate this Agreement.

In the event a condition should exist in, on, or about the Property of an emergency nature, including structural repairs that require immediate repair in order to preserve and protect the Casino, to assure its continued operation, or to protect the health and safety of the patrons or employees, the MANAGER, on behalf of the NATION and as an Operating Cost, is authorized to take all steps and to make all expenditures reasonably necessary to repair and correct any such condition, whether or not provisions have been made in the applicable Annual Plan for any such emergency expenditure. The MANAGER agrees that it shall make such repairs and replacements

only after the MANAGER has made a reasonable attempt (if circumstances permit) to inform the NATION's Tribal Council of the existence of such emergency, the repairs and replacements the MANAGER proposed to make, and the estimated amount of the expenditures to be incurred. If the MANAGER has been unable to advise the NATION's Tribal Council in advance, it shall promptly notify the Council as soon as reasonably possible. Expenditures required to be made by the MANAGER in connection with an emergency shall be paid from the Gross Receipts Account. The MANAGER and the NATION shall replenish funds paid from the Gross Receipts Account with any insurance proceeds received in connection with the emergency condition or situation.

VIII. NATION APPROVALS

If the MANAGER wishes to discuss or request approval of matters described specifically in this Agreement as requiring Tribal Council review and approval, the MANAGER hereby agrees to provide the Tribal Council with ten (10) copies of a written summary, including the decision requested or recommended and reasons therefor, of all such matters at least five (5) working days before such matter is presented to the Tribal Council for review and approval, unless a genuine emergency requires immediate Tribal Council action.

IX. DEFAULT; TERMINATION

A. Time is of the Essence. Because of the potential health and economic impacts upon the NATION, the MANAGER, and the surrounding community should either of the parties default in the performance of their duties in a timely and efficient manner, time is agreed to be of the essence in the performance of each of the terms and conditions of this Agreement. This

provision is a bargained-for consideration, not a mere recital, and both parties specifically agree to be bound by it.

B. **Events of Default.** The happening of any of the following events shall constitute an Event of Default, for which default the offended or harmed party may terminate this Agreement if such default is not timely cured as hereinbelow provided:

1. **Payments.** The MANAGER or NATION shall default in the payment of any payments due hereunder when the same shall be due and payable and such default shall continue unremedied for a period of ten (10) days after notice of such default shall have been delivered to the defaulting party.

2. **Representations and Warranties.** Any representation or warranty made by the MANAGER in this Agreement or in any report, certificate, financial statement, or other instrument or document delivered in connection with this Agreement shall prove to have been false or misleading in any material respect.

3. **Performance of Covenants and Warranties.** The MANAGER or the NATION shall default in the performance of any material covenant, warranty, or condition on its respective part to be performed or observed pursuant to the terms of this Agreement and such default shall continue unremedied for a period of ten (10) days after notice of such default shall have been delivered to the defaulting party.

4. **Insolvency and Bankruptcy.** The MANAGER or the NATION files a voluntary petition for bankruptcy or reorganization, is adjudicated a bankrupt or insolvent, applies

for or consents to a receiver, trustee, or liquidator of its assets, makes a general assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they mature and such petition is not dismissed within sixty (60) days after the date of filing thereof.

5. **Performance of Material Management Duties.** The MANAGER or the NATION fails to do any of the acts or perform any of the duties material to this Agreement, violates applicable federal laws or regulations, including but not limited to the Environmental Requirements, or otherwise acts in any manner so as to constitute a default of the material terms of this Agreement and such default shall continue unremedied for a period of ten (10) days after notice of such default shall have been delivered to the defaulting party.

6. **Unremedied Defaults.** The MANAGER or the NATION performs any act described as a default or an Event of Default in this Agreement and such default shall continue unremedied for a period of ten (10) days after notice of such default shall have been delivered to the defaulting party.

7. **Determinations of Default.** A panel of arbitrators or the Gaming Commission determines that the MANAGER or the NATION materially breached this Agreement or has violated the Act, the Ordinance, or the Compact and such default shall continue unremedied for a period of ten (10) days after notice of such default shall have been delivered to the defaulting party.

8. **Other Events of Default.** The MANAGER knowingly makes a material false statement in any application for a license, in any statement annexed thereto, or in any response to a request by the Gaming Commission for information; fails to keep sufficient books and records to substantiate the reports required by the Act, Ordinance, Compact, or this Agreement; acts or fails to act, or causes or allows another to act or fail to act, in such a way as

to result in material reportable conditions or qualifying exceptions in any audit report, and fails or refuses, at the NATION's request, to remedy such exceptions within seven (7) days of receipt of notice of such act or failure to act; falsifies any books or records relating to any transaction connected with the operation or conduct of the Casino; is convicted of any felony act prohibited by the Act, Ordinance, Compact, or this Agreement; interferes with or unduly influences, or attempts to interfere with or unduly influence, the internal affairs or governmental decisions of the NATION; deliberately or substantially fails to provide information to or answer relevant questions of the NATION or the Gaming Commission; has been determined to be a person whose prior activities, criminal record if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; or otherwise fails to comply with the Act, the Ordinance, the Compact, or the terms of the license or certification granted pursuant to the Act, the Ordinance, or the Compact.

C. **Cure Period Extended.** For purposes of this Article, whenever a default is allowed to be remedied within a stated time period, should such default not be capable of being cured within the stated time period, such period shall be extended for a time sufficient to allow completion of the remedy so long as such cure shall be commenced within the allotted period and thereafter diligently prosecuted to completion.

D. **Termination of Agreement.** This Agreement may also be terminated if: (1) both parties mutually agree in writing to terminate this Agreement; (2) a buy-out occurs pursuant to the terms and conditions of this Agreement; or (3) the MANAGER fails to or ceases to meet the standards established by the Ordinance for licensing.

X. BUY-OUT OF MANAGEMENT AGREEMENT; ADDITIONAL TERMINATION FEE

A. Buy-Out. After thirty-six (36) months following the Approval Date or Commencement Date, whichever is later, and if all current and past management fees and expenses of the MANAGER have been paid in full, the NATION may terminate this Agreement by paying to the MANAGER as a condition precedent to termination: [redacted]

B. Additional Termination Fee. Should any termination occur at any time in anticipation of an expansion of the Casino or within nine (9) months prior to an expansion of the Casino, by the addition of gaming devices or games or any change in the type of games offered, whether or not the size of the Casino is changed, the MANAGER shall be entitled to an additional termination fee based on the number of new gaming devices or games, or changes in the type of games offered in the Casino. In the event of such an occurrence, the NATION and the MANAGER agree to negotiate in good faith to determine the additional amounts to be paid

to the MANAGER as a part of the termination fee to compensate the MANAGER for the additional fees that would have been earned during the remainder of the term of this Agreement as if this Agreement had not been terminated prior to its expiration date. Should the parties be unable to agree after good faith negotiations, either party may submit the matter to arbitration as provided in Article XXII hereof.

XI. NON-COMPETITION

A. MANAGER. During the term of this Agreement, and for one and one-half (1½) years after the termination of this Agreement for any cause, the MANAGER shall not directly or indirectly engage within a [redacted] of the Casino in any business or venture that is comparable to or competitive with any gaming activity conducted by the Casino, or contract independently with or to work for any person engaged in the same or similar business within a [redacted] of the Casino. The MANAGER shall not, after the termination of this Agreement, use to its own advantage, or the advantage of any other person, any information gained for or from the files or business of the NATION and which is proprietary to the NATION. Such restriction shall not apply to any information in the public realm or otherwise released by the NATION, or to information that was known or proprietary to the MANAGER prior to introduction thereof to the Casino.

The MANAGER specifically represents and admits that, in the event of termination of this Agreement for any cause whatsoever, its experiences and capabilities are such that it can find engagement in other business fields or enterprises, or outside of a [redacted] the Casino, and that the enforcement of a remedy, including but not limited to an injunction as described hereinabove, will not prevent the MANAGER from making

a profit.

B. NATION. During the term of this Agreement, and for [redacted] after the termination of this Agreement for any cause, the NATION shall not directly or indirectly provide gaming management advice, consultation, or services in Arizona, provided, however, that notwithstanding the foregoing, the NATION shall retain the right to conduct gaming operations on the Reservation. The NATION shall not, after the termination of this Agreement, use to its own advantage, or the advantage of any other person, any information gained for or from the files or business of the MANAGER and which is proprietary to the MANAGER. Such restriction shall not apply to any information in the public realm or otherwise released by the MANAGER, or to information that was known or proprietary to the NATION prior to introduction thereof to the Casino.

C. Non-Competition is of the Essence. **THIS NON-COMPETITION PROVISION IS A PART OF THE ESSENCE OF THE CONSIDERATION HEREOF, AND EACH PARTY UNDERSTANDS AND AGREES THAT IRREPARABLE INJURY WILL RESULT TO THE OTHER IN THE EVENT OF A BREACH OF THIS NON-COMPETITION AGREEMENT. IN SUCH EVENT, THE BREACHING PARTY AGREES THAT THE OTHER SHALL BE ENTITLED, IN ADDITION TO ANY OTHER REMEDIES AND DAMAGES AVAILABLE, TO AN INJUNCTION TO RESTRAIN THE VIOLATION OF THIS AGREEMENT BY THE BREACHING PARTY, ITS PARTNERS, AGENTS, AND EMPLOYERS, AND ALL PERSONS ACTING FOR OR WITH THE BREACHING PARTY.**

XII. EXPANSION RIGHTS

During the term of this Agreement, if the NATION expands its Casino operations beyond

that contemplated by this Agreement to an additional facility (other than a facility wholly or partially replacing or expanding the facility defined in this Agreement and located on the Property) as currently authorized by the Compact, or a casino facility beyond the boundaries of the Reservation but under the ownership of the NATION, then the MANAGER will have the right to manage and operate said facility(ies) on behalf of the NATION subject to a new management agreement incorporating, to the extent reasonable and applicable, the same general terms and conditions of this Agreement, and terminating simultaneously therewith, provided, however, that any such Management Agreement shall only become effective after approval by the NIGC. The Nation shall neither authorize nor implement any gaming floor expansion which exceeds the area provided in Section III except in accordance with and pursuant to an amendment to the Management Agreement executed by the Tribe and the Manager. Any such amendment to the Management Agreement shall only become effective after approval by the NIGC.

XIII. SALE OF ALCOHOLIC BEVERAGES

The sale of liquor at the Casino is prohibited unless specifically authorized in writing by the NATION.

XIV. FEDERAL TRADER'S LICENSES

All vendors trading on or at the Property shall obtain and, upon request by the NATION, show their federal Indian trader's license issued pursuant to the Indian Trader Statutes, 25 U.S.C. §§ 261-64 (1988). All such vendors are also subject to tribal licensing and certification requirements, and all vendors of food must, in addition, meet and comply with all licensing, certification, health, and medical requirements of the State.

XV. RECORDATION

At the option of the MANAGER, a memorandum based on this Agreement may be recorded in any public records office.

XVI. ORDINANCE AND COMPACT

The MANAGER understands and agrees that the Casino shall be conducted in accordance with the Ordinance, Compact, and the Act, as they may be amended from time to time.

XVII. LICENSING AND APPROVALS

The MANAGER will promptly submit all required applications for licensing by the NATION and any required certification by the State. Failure to obtain any of such approvals or approval of this Agreement by the National Indian Gaming Commission, after both parties have used their best efforts to gain such approval, shall render this Agreement null and void, and the MANAGER shall have no claim for the return of the [redacted]

XVIII. NON-INTERFERENCE WITH TRIBAL GOVERNMENT

The MANAGER hereby agrees that it shall not interfere with or attempt to influence the internal affairs or governmental decisions of the NATION. Appearance before and discussions with the Tribal Council on issues and matters related to the performance of this Agreement by the MANAGER, or regarding the MANAGER's right and ability to perform this Agreement,

shall not be deemed to be a violation of this Article XVIII.

XIX. TRIBAL REGULATION AND LAW ENFORCEMENT

The MANAGER agrees to abide by all applicable laws, regulations, and ordinances now in force and effect, or that may be hereafter in force and effect, and to require its employees and agents to the best of its ability to abide by such laws, regulations, and ordinances. The MANAGER further agrees that it will notify the appropriate law enforcement officials whenever it has knowledge or reason to believe that any felony or misdemeanor is taking place or has taken place at or in the vicinity of the Casino or concerning the Casino in any way. The MANAGER agrees further to report any such instances to law enforcement officials and the Tribal Council of the NATION and the NATION's Gaming Commission in writing, which writing may be satisfied by submission by the MANAGER of copies of incident reports prepared with respect to any reportable occurrence. The NATION shall have full access to the MANAGER's incident reports.

The NATION hereby agrees that, except as otherwise provided herein, and except for exercising its authority to promulgate environmental laws and regulations reasonably calculated to protect the environment, it will not exercise its authority as a sovereign to create any statutory, administrative, common law, or other obligations of the MANAGER that may not reasonably be anticipated in the normal course of the MANAGER's use and occupancy of the Property, that result in the imposition on the MANAGER of an unreasonable or extraordinary expense, or that materially or unreasonably interfere with the MANAGER's fulfillment of its responsibilities and enjoyment of its rights and benefits under this Agreement. Should the NATION promulgate any environmental laws or regulations that result in the imposition on the MANAGER of an

unreasonable or extraordinary expense, or that materially or unreasonably interfere with the MANAGER's use and enjoyment of the Property and its rights and benefits under this Agreement, the MANAGER may declare that the NATION has terminated this Agreement, and, upon demand by the MANAGER, the NATION shall pay to the MANAGER a buy-out fee and, if applicable, a termination fee calculated pursuant to the provisions of Article X. **Nothing herein is intended or shall be construed to require the NATION to consent to the handling or presence of Hazardous Waste as prohibited herein.**

XX. PATRON DISPUTES

A. Gaming Disputes. Whenever the MANAGER refuses payment of alleged winnings to a patron or is otherwise engaged in a dispute with a patron, and the MANAGER and the patron are unable to resolve the dispute to the satisfaction of the patron in accordance with written policies and procedures developed by MANAGER and approved by the NATION, and the dispute involves:

1. Substantial Disputes. At least [redacted] the MANAGER shall immediately notify the Gaming Commission. The Gaming Commission shall conduct whatever investigation it deems necessary and shall determine whether payment should be made; or

2. Non-Substantial Disputes. Less than [redacted] or is non-monetary in nature, the MANAGER shall inform the patron of his or her right to request that the Gaming Commission conduct an investigation. Upon request of the patron, the Gaming Commission shall conduct whatever investigation it deems necessary and shall determine whether payment or other disposition should be made or imposed.

B. Notice. After conducting an investigation and within thirty (30) days after the Gaming Commission first receives notification from the MANAGER or a request to conduct an investigation from the patron, the Gaming Commission investigator shall mail a copy of his written decision by certified mail, return receipt requested, to the MANAGER and the patron.

C. Effective Date of Decision. The decision of the Gaming Commission investigator is effective on the date it is received by the aggrieved party as reflected on the return receipt, or five (5) days after mailing, whichever occurs first.

D. Review of Decision. Within thirty (30) days after the effective date of the decision of the Gaming Commission investigator, the MANAGER or the patron may file a petition with the Gaming Commission requesting a review of the decision. The Gaming Commission may set a hearing on the matter or make a decision based solely upon the investigator's decision and other documentation provided to it by the patron and/or the MANAGER. The Gaming Commission shall then issue a written decision and mail it to the MANAGER and the patron pursuant to the notices procedures set forth herein. The decision of the Gaming Commission shall be final and binding upon the patron and the MANAGER and shall not be subject to judicial review or other legal action.

XXI. CONSTRUCTION AND FORUM

This Agreement was negotiated and written by both parties, was entered into on the Reservation and is to be performed on the Reservation. If a dispute arises between the parties as to any provision of this Agreement, the parties agree that the dispute will be settled by arbitration.

XXII. ARBITRATION

A. Arbitration. Except as otherwise set forth in this Agreement, all disputes that may arise in connection with this Agreement, including without limitation disputes concerning the interpretation of this Agreement and disputes concerning the giving of any consent or approval that may be required to be given by either party, shall be referred to arbitration in accordance herewith. All proceedings by the Arbitration Panel (as defined below) shall be conducted in accordance with the rules of the American Arbitration Association, except to the extent expressly overruled by the terms of this Article. Unless otherwise agreed or as otherwise determined by the Arbitration Panel, all arbitration proceedings shall be conducted in Arizona.

B. Notice. The party seeking arbitration shall serve upon the other a written notice of demand to arbitrate. The notice shall specify with particularity the nature of the dispute, the particular provision(s) of this Agreement at issue, and the proposed relief sought by the party demanding arbitration.

C. Response. Upon receipt of a notice of a demand to arbitrate, a party may respond in writing to the allegations made in the notice. Such response shall be served upon the party demanding arbitration within fifteen (15) days of the receipt of the notice of demand to arbitrate.

D. Arbitration Panel. The party seeking arbitration shall set forth in its notice of demand to arbitrate such party's choice of an arbitrator. The party receiving notice of demand to arbitrate shall within fifteen (15) days after receipt of such notice designate another arbitrator by written notice back to the first party, and the two designated arbitrators shall select a third arbitrator. The Arbitration Panel shall be required to render a decision in accordance with the procedures described herein within fifteen (15) days after being notified of their selection.

E. Arbitration Decision. Except as specifically set forth to the contrary herein, the

decision of the Arbitration Panel with respect to any matter submitted to them under this Agreement shall be binding, enforceable, and unappealable on, with respect to, and by both parties hereto. The decision of the Arbitrator shall be enforced with the same force and effect as a court having competent jurisdiction. The prevailing party may bring any action in a court of competent jurisdiction to enforce the decision of the Arbitration Panel, in the manner provided herein.

F. Arbitration Costs. The fees and expenses of the Arbitration Panel will be paid by the non-prevailing party, unless there is no prevailing party, in which case the NATION and the MANAGER shall each pay their own expenses; provided, however, the Arbitration Panel shall have the authority to assess such costs disproportionately or to assess all of the costs to one party if arbitration was required because of unreasonableness or bad faith on the part of the party demanding to arbitrate. All arbitration proceedings shall be conducted to expedite resolution of the dispute and to minimize cost to the parties.

XXIII. LIMITED WAIVER OF SOVEREIGN IMMUNITY; JURISDICTION

Nothing in this Agreement is or shall be deemed to be a waiver of the NATION's sovereign immunity from suit, which immunity is expressly asserted, provided that the NATION agrees to waive its immunity for the sole purpose of enforcing any binding arbitration decision rendered pursuant to the terms and conditions of this Agreement or any proceeding commenced for purposes of enforcing the terms of this Agreement by either party hereto; provided further that the NATION's consent to suit is only in and to the Yavapai-Apache Tribal Court; and provided further that the NATION's liability is limited to insurance proceeds or the NATION's revenues received from the Casino. All disputes will be determined in accordance with tribal and

applicable federal law; if no such law exists, then, in the discretion of the judges, state law will be governing.

XXIV. DEFAULT FEES

Upon determination of breach or default of this Agreement by the MANAGER or the NATION, which default is not timely cured, the party not in default or breach shall have the right to recover from the party in breach or default all reasonable attorneys' fees, expert witness fees, arbitration costs, and court costs incurred in enforcing its rights hereunder or in successfully defending itself against claims by the other party.

XXV. DELAY OR OMISSION

No delay or omission to exercise any right, power, or remedy accruing under this Agreement shall impair such right, power, or remedy, nor shall it be construed to be a waiver of or acquiescence in a breach of or default under the Agreement. BOTH PARTIES SPECIFICALLY AND AFFIRMATIVELY AGREE NOT TO CONSTRUE THE CONDUCT, DELAY, OR OMISSION OF THE OTHER PARTY AS ALTERING IN ANY WAY THE PARTIES' AGREEMENTS AS DEFINED IN THIS AGREEMENT. Any waiver, permit, or approval of any breach of or default under this Agreement must be in writing, and, because the language of this Section was negotiated and intended by both parties to be binding and is not a mere recital, both parties hereby agree that they will not raise waiver or estoppel as affirmative defenses so as to limit or negate the clear language and intent of this Section. All remedies, either under this Agreement, by law, or otherwise afforded to either party shall be cumulative, not alternative.

XXVI. NOTICE

All notices, payments, or demands required or permitted to be given hereunder shall be in writing and shall be (A) delivered by first class, certified, or registered mail to the Postal Service of the United States of America postage pre-paid, or (B) hand-delivered by courier or overnight delivery service, to the appropriate party at the address shown below or such other address as either party may designate by notice as provided herein, with a copy of all such notices also being sent to the Secretary c/o Superintendent, Truxton Canyon Agency, Post Office Box 37, Valentine, Arizona 86437. All such notices, payments, and demands shall be considered to have been given, if in compliance with this section, on the fifth day after such notice, payment, or demand is postmarked and deposited to the United States Postal Service, or, if the notice, payment, or demand is hand-delivered by courier or overnight delivery service, on the date of actual delivery to the address of the party to whom the notice, payment, or demand is addressed.

If to the MANAGER:	Fitzgeralds Arizona Management, Inc. Attention: Phillip D. Griffith, President 250 North Virginia Street Reno, Nevada 89501
With a copy to:	Gerald C. Heetland, Esq. 301 Fremont Street, Twelfth Floor Las Vegas, Nevada 89101
If to the NATION:	Yavapai-Apache Nation Attention: Chairman Post Office Box 1188 Camp Verde, Arizona 86322
With a copy to:	Susan M. Williams, Esq. Gover, Stetson & Williams, P.C. 2501 Rio Grande Boulevard, N.W. Albuquerque, New Mexico 87104-3223

XXVII. ENTIRE AGREEMENT; MODIFICATION

Other than the Technical Services Agreement and the Interim Agreement between the parties and dated of an even date herewith, both of which are hereby superseded to the extent that either may be contradictory or in conflict with this Agreement, this Agreement constitutes the final and entire agreement between the parties, and there is no agreement or promise on the part of either party to do or omit to do any act or thing not herein mentioned. This Agreement is intended as a complete and exclusive statement of the terms and conditions of the parties' agreement and may not be effectively amended, changed, modified, or altered without the written consent of both parties.

XXVIII. PREAPPROVAL; GOOD FAITH

A. **Approval Required.** The parties to this Agreement intend, understand, and agree that this Agreement is not valid or effective unless and until it is approved by the National Indian Gaming Commission.

B. **Best Efforts.** The NATION and the MANAGER shall employ their best efforts in good faith to secure approval of this Agreement. The NATION acknowledges that the MANAGER, prior to execution of this Agreement, in good faith and better to serve the interests of the NATION, entered into the Technical Services Agreement in an effort to permit the NATION to pursue the realization of its rights under the Compact and the Ordinance through the operation of a temporary casino facility, pending construction, or refurbishment, and completion of a permanent casino facility and the approval of this Agreement. The NATION understands and agrees that the MANAGER's payments under the Technical Services Agreement does not fully compensate the MANAGER for the provision of its experience and expertise in

the design, opening, marketing, and operation of the Casino. Such just compensation will be achieved only upon the approval and the full performance of this Agreement. To this end, the NATION agrees to use its best efforts in good faith to secure approval of this Agreement by the National Indian Gaming Commission.

XXIX. SECURED INTEREST

All amounts owing by the NATION to the MANAGER shall be secured by a pledge and security interest in favor of the MANAGER in all revenues and proceeds of the Casino. Should the NATION fail or refuse to execute and deliver a security agreement and UCC-1 Financing Statement for such purpose, the NATION hereby appoints the MANAGER as its attorney-in-fact with full power and authority to execute such security agreement and UCC-1 Financing Statements (which Financing Statements shall not secure or purport to secure any interest in real property belonging to the NATION) and to cause same to be filed in all appropriate jurisdictions as may be required to perfect the interest of the MANAGER therein. Such pledge and security interest shall stay in force and effect so long as any monies are owing by the NATION to the MANAGER under this provision.

XXX. ASSIGNMENT OF AGREEMENT; SUBCONTRACTORS

A. Assignment. Neither party may assign this Agreement or its interest under this Agreement, provided however that, upon provision of thirty (30) days written notice to the MANAGER, the NATION may assign this Agreement and its interest hereunder to a duly established corporation or other entity wholly-owned by the NATION. Nothing in this

Agreement shall prohibit or in any way restrict the transfer of ownership shares in MANAGER, provided that, if such transfer would create a change in effective control of the MANAGER, MANAGER shall obtain advance approval of such transfer of ownership by the NATION. For purposes of this Agreement "control" means the power or authority to manage, direct, restrict, regulate, govern, administer or oversee the corporate affairs of MANAGER. See Black's Law Dictionary. Furthermore, nothing in this Agreement shall prohibit or in any way restrict the transfer of ownership shares in any corporation which presently holds, or would upon completion of the transfer hold, an affiliate or parent status with regard to MANAGER. MANAGER will comply with any background investigation required pursuant to 25 C.F.R. § 537, and with any licensing requirements under Section XVII, above, with respect to any change in MANAGER'S ownership or control during the term of this Agreement.

B. **Subcontractors.** The MANAGER shall have the right to enter into sub-contracts for the provision of goods and services for the Casino, in the ordinary and regular course of business customary in the casino industries, provided that the MANAGER shall not sub-contract the provision of management services, and provided further that any sub-contract that obligates the Casino to incur a cost in excess [redacted] shall be subject to the written approval of the NATION. 64

XXXI. INSPECTION AND TESTING

The Secretary of the Interior, the NATION, and their authorized representatives shall have the right, at any time during the term of this Agreement, and with reasonable written notice to the MANAGER, to enter upon the Property or any part thereof for the purpose of inspecting and/or conducting environmental or other tests on the Property, all buildings and other improvements erected and placed thereon, and all activities occurring thereon; provided that the

MANAGER shall have the right to be present, or to have its designee present, at all times during such inspection. The MANAGER agrees to permit such inspection and/or testing. This right to

inspect and test does not extend to confidential information or trade secrets of the MANAGER. Should the NATION find any violation of applicable laws, the NATION may compel the MANAGER to investigate and remedy any such violations or resultant hazards which are the responsibility of the MANAGER under the terms of this Agreement, at the MANAGER's sole cost and expense.

XXXII. SEVERABILITY

In the event that any provision in this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

XXXIII. HEADINGS

The headings to the various paragraphs of this Agreement are inserted only for convenience of reference and are not intended, nor shall they be construed, to modify, define, limit, or expand the intent of the parties.

XXXIV. GENDER

Any pronoun used herein shall refer to any gender and to any number as the context requires or permits.

XXXV. AMENDMENT OF AGREEMENT

The NATION and the MANAGER have executed this Agreement in a form that excludes Class II gaming from the definition of Gaming Activities and management by the MANAGER of any Class II gaming operations at the Casino due to the requirement of complete background

checks prior to the commencement of the operation of Class II gaming under the management of the MANAGER. It is the express intent and agreement of the NATION and the MANAGER that the MANAGER will submit to the National Indian Gaming Commission concurrently with, or as soon as reasonably possible following, the submission of this Agreement to the National Indian Gaming Commission for approval, all applications and materials required for such Class II background investigations of the MANAGER, with a request by the NATION and the MANAGER that such background investigations be undertaken and processed concurrently with the processing of this Agreement, but with an express request that approval of this Agreement not be delayed or withheld by the National Indian Gaming Commission pending completion of the Class II background check. The NATION and the MANAGER covenant and agree that this Agreement will be amended to incorporate and include Class II gaming as part of the definition of Gaming Activities, upon completion of the background check and clearance by the National Indian Gaming Commission of the MANAGER to manage such Class II gaming on behalf of the NATION, with references to "Class II" to be thereupon inserted at all appropriate places in the Agreement in the same manner as if included therein from the outset. Such amendment will not, however, result in or require the change of any other terms or conditions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands.

YAVAPAI-APACHE NATION

By: _____
Chairman Theodore Smith, Sr.

Approved May 22, 1995

_____
Jana McKeag, Commissioner
National Indian Gaming Commission

FITZGERALDS ARIZONA MANAGEMENT, INC.

By _____
Phillip D. Griffith, President

CERTIFICATION OF THE YAVAPAI-APACHE NATION

I, the undersigned, as Chairman of the Yavapai-Apache Nation, do hereby certify that the foregoing Management Agreement was considered and approved by the Tribal Council at a duly called meeting on the 13th day of May, 1995, at which a quorum was present, that the same was adopted by a vote of 8 in favor and 0 opposed, and that Theodore Smith, Sr., as Chairman, was authorized to sign the Management Agreement on behalf of the Yavapai-Apache Nation.

Theodore Smith SR

Attest:

Karla Pearce
Secretary

CERTIFICATION OF FITZGERALDS ARIZONA MANAGEMENT, INC.

I, the undersigned, as President of Fitzgeralds Arizona Management, Inc., do hereby certify that the foregoing Management Agreement was considered and approved by the Board of Directors at a duly called meeting on the 1st day of MAY, 1995, at which a quorum was present, that the same was adopted by a vote of 4 in favor and 0 opposed, and that I, as President of Fitzgeralds Arizona Management, Inc., was authorized to sign the Management Agreement on behalf of Fitzgeralds Arizona Management, Inc.

Attest:
Secretary

ACKNOWLEDGMENT OF NATION

STATE OF ARIZONA)
) ss:
COUNTY OF Yavapai)

ON THIS 3 day of May, 1995, before me, the undersigned Notary Public, personally appeared Theodore Smith, Sr., to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same in his official capacity as Chairman of the Yavapai-Apache Nation, as the free and voluntary act of said Nation for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Darlene Rubio
NOTARY PUBLIC

My Commission Expires:

Feb 15, 1999

OFFICIAL SEAL
DARLENE RUBIO
Notary Public - State of Arizona
YAVAPAI COUNTY
My Comm. Expires Feb. 15, 1999

ACKNOWLEDGMENT OF MANAGER

STATE OF Arizona)
)ss.
COUNTY OF Yavapai)

On this 3 day of May, 1995, before me appeared Phillip D. Griffith, to me personally known, who, being by me duly sworn did say that he is the President of Fitzgeralds Arizona Management, Inc., and that the seal affixed to said instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said Phillip D. Griffith acknowledged said instrument to be the free act and deed of said corporation.

Darlene Rubio
NOTARY PUBLIC

My Commission Expires:

Feb 15, 1999

OFFICIAL SEAL
DARLENE RUBIO
Notary Public - State of Arizona
YAVAPAI COUNTY
My Comm. Expires Feb. 15, 1999