



October 31, 2018

Raymond C. Hitchcock, Chairperson  
Wilton Rancheria  
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Email: rhitchcock@wiltonrancheria-nsn.gov

Brian A. Larson, Executive Vice President, Secretary, and General Counsel  
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Re: Wilton/BGM Gaming Management Agreement approval letter

Dear Chairperson Hitchcock and Mr. Larson:

I am pleased to inform you that I hereby approve the Gaming Management Agreement between the Wilton Rancheria, California and BGM Co. Inc. doing business as BGM Group Co. Inc.

The Indian Gaming Regulatory Act and the regulations of the National Indian Gaming Commission require that the NIGC Chairman approve management contracts for gaming operations on Indian lands.<sup>1</sup> Accordingly, you submitted the Gaming Management Agreement for approval as required by IGRA<sup>2</sup> and NIGC regulations.<sup>3</sup> The submitted Gaming Management Agreement satisfies the standards of NIGC regulations.<sup>4</sup> Therefore, I approve the Gaming Management Agreement and this letter constitutes such approval.

If I learn of any actions or conditions that violate the standards contained in 25 C.F.R. Parts 531, 533, 535, or 537, I may require modifications of, or may void, the contract in accordance with the process set forth in 25 C.F.R. § 535.3.

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1 25 U.S.C. §§ 2711(a)(1) & 2710(d)(9); 25 C.F.R. Part 531.

2 25 U.S.C. § 2711.

3 25 C.F.R. Part 531.

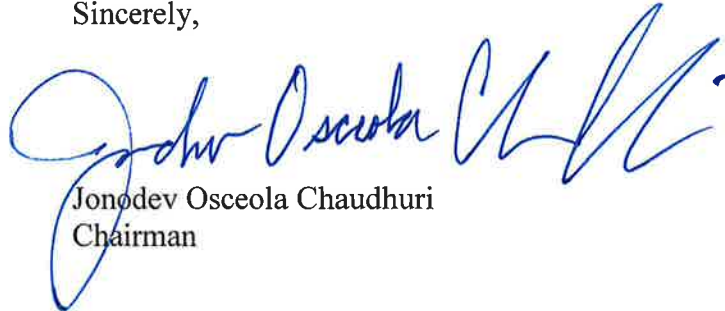
4 25 C.F.R. Parts 531, 533 and 537.

Letter to Chairperson Hitchcock and Mr. Larson  
Re: Wilton/BGM Management Agreement approval letter  
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Should you have any questions concerning this approval, please call Mitch Giles,  
Supervisory Financial Specialist, at (202) 632-7029.

Sincerely,



Jonodev Osceola Chaudhuri  
Chairman

cc: Kevin Wadzinski, Attorney, Powers Pyles,  
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**GAMING MANAGEMENT AGREEMENT  
BETWEEN  
WILTON RANCHERIA, CALIFORNIA,  
AND  
BGM CO. INC.**

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**GAMING MANAGEMENT AGREEMENT**

**THIS GAMING MANAGEMENT AGREEMENT** (“Agreement”) has been entered into as of the 10<sup>th</sup> day of October, 2018, by and between **WILTON RANCHERIA, CALIFORNIA**, a federally recognized Indian tribe (the “Tribe”) and **BGM CO. INC.**, a Nevada corporation, doing business as BGM Group Co. Inc., (“Manager”) (each a “Party” and collectively, the “Parties”).

1. Recitals. Capitalized terms used in these Recitals are defined in Section 2 of this Agreement.

1.1 The Tribe is a federally recognized Indian tribe eligible for the special programs and services provided by the United States to Indian tribes, and is recognized as possessing and exercising inherent powers of self-government.

1.2 The Tribe wishes to engage a company experienced in the management of casinos to provide certain management services in connection with the Tribe’s Casino Resort and to increase Tribal revenues and to enhance the Tribe’s economic self-sufficiency and self-determination.

1.3 The Manager has experience in managing gaming operations and is able and wishes to provide management services to the Tribe in accordance with the terms hereof.

1.4 This Agreement sets forth the manner in which the Tribe’s gaming operations will be equipped and managed by the Manager.

NOW, THEREFORE, in consideration of the mutual promises and covenants and for other good and valuable consideration as set forth herein, the receipt and sufficiency of which are expressly acknowledged, the Parties agree as follows:

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

2.1 “Affiliate” means as to either Party, any corporation, partnership, limited liability company, joint venture, trust, department or agency or individual, employee, officer, or director, controlled by, under common control with, or which controls, directly or indirectly, such Party, as appropriate. BGM Co. Inc. acknowledges that East West Gaming, LLC, and Boyd Gaming Corporation are considered to be Affiliates of BGM Co. Inc. for purposes of this definition. The Tribe acknowledges that a Tribal Party is considered to be an Affiliate of the Tribe for purposes of this Agreement.

2.2 “BIA” means the Bureau of Indian Affairs of the Department of the Interior of the United States of America.

2.3 “Budgets” means the Operating Budget and the Capital Expense Budget for the Gaming Facility.

- 2.4 “Capital Expenses” means the cost of construction, alteration or rebuilding of the Gaming Facility incurred after the Commencement Date and any furniture, trade fixtures and equipment and other tangible or intangible property of the Gaming Facility, the costs of which are required by GAAP to be capitalized and depreciated or amortized.
- 2.5 “Capital Expense Budget” means the budget for Capital Expenses adopted in accordance with Section 4.7.2.
- 2.6 “Capital Reserve Fund” means the reserve fund established in Section 4.10.5 to pay Capital Reserves.
- 2.7 “Casino Resort” means collectively, the Gaming Facility, ancillary facilities and all the buildings, improvements, and fixtures and grounds, parking lots and structures in and on which the Enterprise is located.
- 2.8 “Casualty Event” has the meaning ascribed to it in Section 14.1.
- 2.9 “Chairman” means the Chairman or Chairperson of the NIGC.
- 2.10 “Class II Gaming” means Class II Gaming as defined in IGRA and its implementing regulations.
- 2.11 “Class III Gaming” means Class III Gaming as defined in IGRA and its implementing regulations.
- 2.12 “Commencement Date” means the date that the Gaming Facility is substantially complete, open to the public and that Gaming is conducted in the Gaming Facility.
- 2.13 “Compact” means a Tribal-State Compact between the Tribe and the State of California regarding Class III Gaming, as the same may, from time to time, be amended.
- 2.14 “Constitution” means the Constitution of the Tribe adopted on November 12, 2011, and as the same may, from time to time, be amended.
- 2.15 “Developer” means East West Gaming, LLC, a California limited liability company.
- 2.16 “Development Fee” has the meaning ascribed to it in that certain Development Agreement by and between the Tribe and East West Gaming, LLC, dated July 20, 2012, as may be amended.
- 2.17 “Depository Account” has the meaning ascribed to it in Section 4.10.2.
- 2.18 “Disbursement Account” has the meaning ascribed to it in Section 4.10.3.
- 2.19 “Effective Date” means the date of written approval by the Chairman of this Agreement.
- 2.20 “Enterprise” means:

- (i) any Gaming operation of the Tribe or a Tribal Party, authorized under IGRA, conducted within the Gaming Facility (“Gaming Enterprise”),
- (ii) the operation of a Hotel within the Casino Resort,
- (iii) the operation of Automatic Teller Machines (“ATM”) within the Casino Resort,
- (iv) the sale of food, beverages (including alcoholic beverages), within the Casino Resort, and the sale of gifts, souvenirs, tobacco and retail items, within the Casino Resort, and
- (v) any other activity or operation, whether or not subject to a lease, within the Casino Resort that generates Revenue, including without limitation, the following: gift shop, movie theater, spa, health/fitness club, sporting event, sports center, entertainment, and gallery.

2.21 “Enterprise Employees” means those employees working at the Casino Resort. Enterprise Employees are deemed employees of the Tribe.

2.22 “Enterprise Employee Policies” has the meaning ascribed to it in Section 4.4.2.

2.23 “Enterprise Name” has the meaning ascribed to it in Section 7.1.

2.24 “Excluded Revenue” shall mean the following revenues actually received by the Enterprise to the extent included in Gross Revenues:

2.24.1 any gratuities or service charges added to a customer's bill;

2.24.2 any credits or refunds made to customers, guests or patrons;

2.24.3 any sums and credits received by the Enterprise for lost or damaged merchandise;

2.24.4 any sales taxes, excise taxes, gross receipt taxes, admission taxes, entertainment taxes, tourist taxes or charges received from patrons and passed on to the Tribe or any other governmental or quasi-governmental entity;

2.24.5 any proceeds from the sale or other disposition of Furnishings and Equipment or other capital assets of the Enterprise;

2.24.6 any fire and extended coverage insurance proceeds other than (i) for business interruption (such business interruption proceeds to be included in Gross Revenues) and (ii) insurance proceeds reimbursing any costs previously treated as an Operating Expense (such insurance proceeds to be included in Gross Revenues);

2.24.7 any condemnation awards for a condemnation of any part of the Facility other than a condemnation award for a temporary condemnation of the Facility for a period that does not give rise to Manager's termination right pursuant to Section 4.3, 14.3 and 12.2.1;

2.24.8 any proceeds of financing or refinancing; and

2.24.9 any interest on the Tribal Distribution Account.

It is intended that this provision be consistent with 25 U.S.C. § 2703(9) and 25 C.F.R. § 502.16 as determined in accordance with GAAP consistently applied.

2.25 “Furniture and Equipment” means all furniture, furnishings, and equipment required in the operation of the Enterprise.

2.26 “GAAP” means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, in each case, which are in effect from time to time.

2.27 “Gaming” means any and all activities defined as Class II or Class III Gaming under IGRA.

2.28 “Gaming Commission” means the body created pursuant to the Tribal Gaming Ordinance to regulate Gaming in accordance with the Compact, IGRA and the Tribal Gaming Ordinance.

2.29 “Gaming Enterprise” has the meaning ascribed to it in Section 2.20(i).

2.30 “Gaming Facility” means the buildings, improvements, and fixtures in which any Gaming takes place on the Property.

2.31 “General Manager” means the person employed by Manager and licensed by the Gaming Commission to direct the day-to-day operation of the Enterprise.

2.32 “Gross Gaming Revenue (Win)” means the net win from Gaming activities which is the difference between Gaming wins and losses before deducting costs and expenses, determined in accordance with GAAP consistently applied.

2.33 “Gross Revenues” means all revenues of any nature derived directly or indirectly from the Enterprise including, without limitation, Gross Gaming Revenue (Win), food and beverage sales, net ATM proceeds, and rental or receipts from lessees, sublessees, licensees and concessionaires (but not the gross receipts of such lessees, sublessees, licensees or concessionaires unless otherwise approved by the Parties), business interruption insurance proceeds, any interest on bank account(s), proceeds from litigation and other claims against third parties, and revenue recorded for Promotional Allowances, but excluding any taxes the Tribe is allowed to assess pursuant to Section 8.2, all determined in accordance with GAAP consistently applied.

2.34 “IGRA” means the Indian Gaming Regulatory Act of 1988, PL 100-497, 25 § 2701 et seq. as it may, from time to time, be amended.

2.35 “Legal Requirements” means individually and collectively all applicable laws and regulations, including without limitation, the Tribal Gaming Ordinance, IGRA, the Compact, and applicable Tribal, federal and state statutes, regulations and ordinances.



2.36 “Loan” means any debt financing, loan or loans made to the Tribe to finance the cost of the Gaming Facility, Casino Resort, improvements and the Furniture and Equipment, to provide initial operating capital, to fund Start-up and Pre-Opening Costs and pay costs associated with such loans.

2.37 “Loan Agreement” means the loan agreement(s), indenture(s), credit agreement(s) or other agreements that set forth the terms of any Loan, as the same may be amended, and any substitutions therefor, with respect to the Loan(s); provided that no agreement or document shall constitute a Loan Agreement if that agreement or document, either alone or with other agreements or documents, constitutes a management contract or grants any proprietary interest in the Enterprise within the meaning of IGRA or regulations prompted thereunder.

2.38 “Loan Documents” means the Loan Agreement, promissory note(s) evidencing the Loan, the security agreement securing the Loan and such other documents as may be executed from time to time with respect to the Loan and any amendments thereto and substitutions therefor; provided that no agreement or document shall constitute a Loan Document if that agreement or document, either alone or with other agreements or documents, constitutes a management contract or grants any proprietary interest in the Enterprise within the meaning of IGRA or regulations promulgated thereunder.

2.39 “Loan Payments” means the principal and other payments due under the Loan Documents.

2.40 “Management Fee” means (b) (4)

(b) (4)

2.41 “Minimum Guaranteed Monthly Payment” has the meaning ascribed to it in Section 6.1.2.

2.42 “Net Revenues” means the sum of “Net Revenues (gaming)” and “Net Revenues (other).”

2.43 “Net Revenues (gaming)” means Gross Gaming Revenue (Win), of the Enterprise from Gaming less all Gaming related Operating Expenses, excluding the Management Fee, and less Promotional Allowances, and less all Excluded Revenue for such period. It is intended that this provision be consistent with 25 U.S.C. § 2703(9) and 25 C.F.R. § 502.16 as determined in accordance with GAAP consistently applied.

2.44 “Net Revenues (other)” means all Gross Revenues from all other sources in support of Gaming and not otherwise included in the calculation of “Net Revenues (gaming),” such as room revenues from operation of the Hotel food and beverage, entertainment, and retail, less all non-Gaming related Operating Expenses, excluding the Management Fee and less the retail value of Promotional Allowances, if any, and less all Excluded Revenue for such period. It is intended that this provision be consistent with 25 U.S.C. § 2703(9) and 25 C.F.R. § 502.16 as determined in accordance with GAAP consistently applied. For purposes of this Agreement, “Hotel” means those structures located within the interior boundaries of the Property which are commonly referred to as the “hotel” inclusive of housekeeping and hotel support facilities, and all areas under the roof of each of the foregoing structures, as the same may be expanded from time to

time, provided that the term Hotel does not include any areas or buildings where Gaming is conducted or housed.

2.45 “NIGC” or “Commission” each means the National Indian Gaming Commission established pursuant to 25 U.S.C. § 2704, or any amendment thereto.

2.46 “Operating Budget” means the budget for Operating Expenses adopted in accordance with Section 4.7.

2.47 “Operating Expense” means all normal and necessary costs and expenses in the operation of the Enterprise as determined in accordance with GAAP, including without limitation, the following: (1) interest expense and all non-operating expenses of the Enterprise determined in accordance with GAAP; (2) depreciation and amortization; (3) salaries, wages, and benefits for the Enterprise Employees; (4) materials and supplies; (5) utilities; (6) repairs and maintenance; (7) accounting fees; (8) interest on installment contract purchases; (9) insurance and bonding; (10) advertising and marketing, including busing and transportation of patrons; (11) transportation services to effect the safe transport of daily Enterprise receipts; (12) legal and professional fees; (13) fees, costs, dues and contributions associated with Enterprise membership and participation in trade associations, political action associations and related associations; (14) fire, safety and security costs; (15) reasonable travel expenses for officers and employees of the Enterprise, when such travel is related to the business of the Enterprise; (16) trash removal; (17) costs of goods and services sold; (18) the costs of operation of the Gaming Commission, consistent with Section 4.13; (19) Enterprise recruiting and training expenses; (20) fees or payments due to the NIGC under 25 C.F.R. Part 514 or the State of California or local governments pursuant to the Compact or local agreements as the case may be; (21) lease payments for personal property; (22) internal audit and surveillance costs; (23) other costs and expenditures permitted to be treated as an expense of the Enterprise in accordance with GAAP; (24) any budgeted charitable contributions by the Enterprise; (25) costs of licensing the employees of the Enterprise; (26) a share of Tribal court costs, consistent with Section 4.14. Operating Expenses shall not include: (1) distributions to the Tribe; (2) principal payments on all debt, including without limitation, the Loan; or (3) for purposes of calculations under Section 6, the Management Fee.

It is intended that this provision be consistent with 25 U.S.C. § 2703(9) and 25 C.F.R. § 502.16 as determined in accordance with GAAP consistently applied.

2.48 “Pre-Opening Budget” has the meaning ascribed to it in Section 4.6.2.

2.49 “Pre-Opening Bank Account” has the meaning ascribed to it in Section 4.10.1.1.

2.50 “Promotional Allowances” means the retail value of complimentary food and beverage, merchandise, entertainment, Hotel rooms, tokens for gaming, and any other items of value provided to patrons as promotional items.

2.51 “Property” means the land that will be held in trust by the United States for the benefit of the Tribe, on which the Gaming Facility will be located, as described in more detail on Exhibit “A”.

2.52 “Recoupment Payment” means the repayment by the Tribe to the Manager of: (i) any advance made by the Manager to the Tribe of a Minimum Guaranteed Payment as contemplated by Section 6.1.2; or (ii) any portion of the Management Fee which is not paid to the Manager as provided in Section 6.2.

2.53 “Reserve Funds” means the Capital Reserve Fund and such additional reserve funds as the Parties may agree to create.

2.54 “Start-Up and Pre-Opening Costs” means all those costs incurred for the Enterprise during the six-month period prior to the scheduled Commencement Date necessary to prepare the Casino Resort for opening.

2.55 “Term” has the meaning ascribed to it in Section 3.2.

2.56 “Tribal Distribution Account” has the meaning ascribed to it in Section 4.10.6.

2.57 “Tribal Gaming Ordinance” means the law and any amendments thereto enacted by the Tribe, that authorizes and regulates Gaming on Indian lands.

2.58 “Tribal Ordinance” means any ordinance, law or regulation of the Tribe.

2.59 “Tribal Party” means any (i) agency, instrumentality, arm or division of the Tribe, (ii) the Gaming Commission, and (iii) entity sharing in the privileges and immunities of the Tribe.

3. Engagement of Manager; Term; Exclusivity; Compliance with Laws; Management Fee.

3.1 Engagement of Manager. The Tribe hereby retains and engages Manager for the Term as an independent contractor to manage the Casino Resort and Enterprise in accordance with the terms of this Agreement and Manager accepts such retention and engagement and agrees to undertake Manager’s duties set forth herein. The Tribe shall have the sole proprietary interest in the Gaming Enterprise. The Tribe hereby grants the Manager the exclusive right and obligation to manage and maintain the Casino Resort and Enterprise in accordance with the provisions of this Agreement.

3.1.1 Equipment Costs. The Manager shall purchase or lease on behalf of the Enterprise the necessary Furniture and Equipment, with the approval of the Tribe, which Furniture and Equipment, when purchased, shall be owned by the Tribe. The Manager agrees to assist the Tribe to obtain a Loan to the Tribe of the funds necessary for the purchase or lease of such Furniture and Equipment as may reasonably be required for a Gaming Facility of the size and quality agreed upon by the Parties. The Manager may, upon securing lease financing, lease on behalf of the Enterprise all or a portion of such Furniture and Equipment, subject to the Tribe approving the terms of the lease.

3.2 Term. The term of this Agreement shall begin on the Effective Date and continue for a period of (b) (4) after the Commencement Date, except as provided in Section 3.2.1 (“Term”).

3.2.1 Tolling of the Agreement. If, after a period of cessation of Gaming on the Property because of a Casualty Event or because Gaming on the Property is legally

prohibited or rendered economically unfeasible as a result of the Tribe's default under this Agreement, a decision of a court of competent jurisdiction, or by operation of an applicable tribal, federal, or state law or regulation, the Manager reasonably determines that the recommencement of Gaming shall be legally and commercially feasible, the period of such cessation shall not be deemed to have been part of the Term and the date of expiration of the Term shall be extended by the number of days of such cessation period.

3.3

(b) (4)

(b) (4)

3.4 Parties' Compliance with Law; Licenses; Health and Safety Standards.

3.4.1 Compliance with Legal Requirements. The Parties shall at all times comply with all Legal Requirements. All Gaming covered by this Agreement shall be conducted in accordance with all Legal Requirements. Manager shall take no action or engage in any activity that would cause the Tribe to be in violation of any Legal Requirements, and the Tribe shall take no action or engage in any activity that (i) would cause Manager, its officers, directors, or employees to be in violation of any Legal Requirements or (ii) could result in the revocation of any gaming license held by Manager or its Affiliates. The Manager shall not be obligated to comply with any Tribal Ordinance or other Tribal law if to do so would cause the Manager to violate any applicable non-Tribal law.

3.4.2 Indian Civil Rights Act. Neither the Tribe, nor any Tribal Party, shall take any action that violates the Indian Civil Rights Act (25 U.S.C. §§ 1301-1303) or the Tribe's Constitution.

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

3.4.4 National Environmental Policy Act ("NEPA"). With the assistance of the Manager as requested by the Tribe, the Tribe shall supply the NIGC with all information requested by the NIGC to comply with any regulations of the NIGC issued pursuant to the National Environmental Policy Act.

3.4.5 Licenses. The Manager, and such Manager's executive officers and employees that are required by the Tribal Gaming Ordinance shall seek a license to manage the Enterprise pursuant to the Tribal Gaming Ordinance. The Gaming Commission shall act upon all such license applications promptly and may not arbitrarily or capriciously deny any license sought under this Section 3.4.5. The costs of licensing shall be an Operating Expense, except NIGC background investigation fees, which shall be paid by the Manager pursuant to 25 C.F.R. Part 537.



3.4.6 Fire and Safety. Subject to the oversight of the Tribe, the Casino Resort shall be maintained by Manager in compliance with Titles 19 and 24 of the California Code of Regulations applicable to similar facilities in the County of Sacramento as set forth in the Tribe's Compact with the State of California, Section 6.4.2(j)(1)-(7), provided that nothing in this Agreement shall grant any jurisdiction to any state government or any political subdivision thereof over the Property or the Casino Resort.

3.4.7 Fire Protection. The Tribe shall have the responsibility to provide the Casino Resort with adequate fire protection services. The Tribe shall have the responsibility for obtaining cooperative agreements under which the BIA, and/or local municipalities with volunteer fire departments, shall agree to provide fire fighting services in the event of a fire at the Property. The costs of fire protection services shall be an Operating Expense.

3.4.8 Public Safety Services. The Manager shall provide appropriate security and public safety services for the operation of the Enterprise. All aspects of the Casino Resort security shall be the responsibility of the Manager. The cost of any charge for security and increased public safety services, including without limitation, police protection and emergency medical services, shall be an Operating Expense.

3.5 Management Fee. The Tribe agrees that Manager shall be entitled to, and the Tribe agrees to pay the Manager, the Management Fee as provided in Section 6.2 for Manager's services provided under this Agreement.

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4. Business Affairs in Connection with Enterprise.

4.1 Manager's Authority and Responsibility. All business and affairs in connection with the day-to-day operation, management, maintenance, and improvement of the Casino Resort, including the establishment of operating days and hours, consistent with the Tribal Gaming Ordinance, shall be the responsibility of the Manager. The Tribe hereby grants the Manager and the General Manager the necessary power and authority to take all actions Manager determines necessary in order to fulfill Manager's responsibilities under this Agreement. The General Manager shall be a person selected and employed by the Manager, subject to the approval of the Tribe, which approval shall not be unreasonably withheld. The Tribe shall have the sole proprietary interest in and ultimate responsibility for the conduct of all gaming conducted by the Gaming Enterprise.

4.2 Duties of the Manager. In managing, operating, maintaining, and making necessary or required improvements to the Casino Resort, the cost of which shall be either an Operating Expense or Capital Expense, the Manager's duties shall include, without limitation, the following:

4.2.1 Management. The Manager shall use reasonable measures for the orderly administration, management, and operation of the Enterprise, including without

limitation, cleaning, painting, decorating, plumbing, carpeting, grounds care and such other maintenance and repair and improvement work as is reasonably necessary. The Tribe shall have an absolute right to approval before the Manager makes any significant changes to the décor or landscaping of the Casino Resort.

4.2.2 Compliance. The Manager shall comply with the Constitution and all duly enacted laws of the Tribe.

4.2.3 Contracts in Enterprise's Name and at Arm's Length. Contracts for the operations of the Enterprise shall be entered into in the name of the Enterprise and be signed by the General Manager in accordance with the approved budget. Except in the event of an emergency, any contract requiring an expenditure in any<sup>(b) (4)</sup>

(b) (4)

Manager shall notify the Tribe as soon as practical under the circumstances. The Tribe, in its sole discretion, may raise this threshold amount for contract approval by providing written notice the Manager. No contracts for the supply of goods or services to the Enterprise shall be entered into with Affiliates unless the affiliation is disclosed to the Tribe in writing, and the contract terms are determined by the Tribe to be no less favorable for the Enterprise than could be obtained from a non-affiliated contractor. The Tribe shall have an absolute right to approval of any contract entered into by Manager or entered into in the name of the Enterprise that contains as a provision any waiver of the Tribe's sovereign immunity from suit, and nothing contained in this Section 4.2.3 shall be deemed to be or constitute a waiver of the Tribe's sovereign immunity with respect to such contracts. The Manager shall submit a copy of all contracts of a value of at least<sup>(b) (4)</sup> to the Tribe's legal counsel prior to execution for a determination regarding whether the contract directly or indirectly waives sovereign immunity. In the event the Manager takes any action that is deemed to waive the Tribe's sovereign immunity without the Tribe's approval, the Manager shall indemnify the Tribe for any costs or fees, including reasonable attorneys' fees, arising from such ultra vires action.

4.3 Manager's Obligation; Suspension of Manager's Duties. The Manager's obligations under this Agreement are conditioned on (i) approval of this Agreement by the Chairman of the NIGC and (ii) the timely issuance of all required approvals for the construction of the Casino Resort. If during the Term, Gaming on the Property is: (i) legally prohibited or (ii) rendered economically unfeasible as a result of the Tribe's default under this Agreement or the adoption of a Tribal Ordinance or other Tribal law, the Manager may suspend its duties under this Agreement; provided the notice and cure provisions of Section 12.2.1 shall apply before any suspension under subsection (ii).

4.4 Employees.

4.4.1 Manager's Responsibility. Manager shall have, subject to licensing by the Gaming Commission and the terms of this Agreement, the exclusive responsibility and authority to hire, direct, select, supervise, control, discharge, train and promote all Enterprise Employees, including security personnel, performing regular services for the Enterprise in connection with the maintenancce, operation, and management of the

Enterprise and the Casino Resort and any activity upon the Property; and the sole responsibility for determining whether a prospective employee is qualified and the appropriate level of compensation to be paid.

4.4.2 Enterprise Employee Policies. The Manager shall prepare a draft of Enterprise personnel policies and procedures (the "Enterprise Employee Policies"), and shall submit them to the Tribe for its approval, which approval shall not be unreasonably withheld or delayed, and upon approval, shall be responsible for administering such Enterprise Employee Policies. The Enterprise Employee Policies shall include a dispute resolution procedure in order to establish fair and uniform standards for the employees of the Tribe engaged in the Enterprise as required by NIGC regulations.

4.4.3 Enterprise Employees. Employees of the Enterprise shall be and are hereby deemed employees of the Tribe.

4.4.4 No Manager Wages or Salaries. Neither the Manager nor any of its officers, directors, shareholders, or employees shall be compensated by wages from or contract payments other than the Management Fee by the Enterprise for their efforts or for any work that they perform under this Agreement. Nothing in this subsection shall restrict the ability of an employee of the Enterprise to purchase or hold stock in the Manager or its Affiliates if (i) such stock is publicly held, and (ii) such employee acquires, on a cumulative basis, less than five percent (5%) of the outstanding stock in the corporation, provided that the Tribe's Chairperson, Vice-Chairperson, and members of the Tribal Council shall be prohibited from acquiring or attempting to acquire a financial interest in Manager.

4.4.5 Employee Background Checks. A background investigation shall be conducted in compliance with all Legal Requirements, to the extent applicable, on each applicant for employment as soon as reasonably practicable. No individual whose prior activities, criminal record, if any, or reputation, habits and associations are known to pose a threat to the public interest, the effective regulation of Gaming, or to the gaming licenses of the Manager or any of its Affiliates, or to create or enhance the dangers of unsuitable, unfair or illegal practices and methods and activities in the conduct of Gaming, shall be employed at the Gaming Enterprise by the Manager or the Tribe. Any cost associated with obtaining such background investigations shall constitute an Operating Expense; provided, however, the costs of background investigations relating to shareholders, officers, directors or employees of the Manager or its Affiliates shall not constitute an Operating Expense, but shall be paid by the Manager.

4.4.6 Indian Preference in Employment. To the extent permitted by applicable law, Manager shall give primary preference in recruiting, training and employment to qualified members of the Tribe in all job categories of the Enterprise, including senior management positions. The Manager shall (1) conduct job fairs and skills assessment meetings for the Tribe's members; (2) to the extent permitted by applicable law, abide by any and all enacted laws regarding preference enacted by the Tribe; (3) in consultation with the Tribe, develop a management training program for members of the Tribe structured to provide appropriate training for those participating to assume full control at the conclusion of the Term; and (4) attempt to fill as many jobs as reasonably possible

with qualified members of federally recognized tribes. The costs for recruiting, job fairs, and training shall be Operating Expenses. The Manager shall be reimbursed for actual costs it incurs in providing recruiting, job fairs, or training for the Enterprise, but shall not receive additional compensation for providing such recruiting, job fairs, or training. Final determination of the qualifications of all applicants for employment and candidates for promotion shall be made by Manager, subject to licensing by the Gaming Commission.

4.5 Marketing and Advertising. Manager shall have the responsibility for setting the advertising budget (which shall be part of the Operating Budget approved by the Tribe) and placing advertising and promoting the Enterprise, the costs of which shall be an Operating Expense. Manager may utilize sales and promotional campaigns and activities involving complimentary rooms, food, beverage, shows, and chips and tokens. In recognition that Manager or its Affiliates manage or operate other gaming facilities, Manager shall be authorized to utilize cross-marketing promotions, strategies and techniques. The Tribe shall have an absolute right to approval of all billboard and television advertising prior to placement by the Manager.

4.6 Start-Up and Pre-Opening.

4.6.1 Start-Up and Pre-Opening Costs. Prior to the Commencement Date, the Manager shall assist the Tribe to secure a Loan to provide to the Enterprise the funds necessary for Start-Up and Pre-Opening Costs in accordance with an approved Pre-Opening Budget.

4.6.2 Start-Up and Pre-Opening Program. Prior to the scheduled Commencement Date, Manager shall commence implementation of a start-up and pre-opening program that shall include all activities reasonably necessary to financially and operationally prepare the Casino Resort for opening. Prior to implementation of this program, Manager shall prepare a start-up and pre-opening budget that shall be submitted to the Tribe for its approval ("Pre-Opening Budget"). All costs and expenses of this program shall be an Operating Expense and shall be paid from the Pre-Opening Bank Account.

4.7 Operating Capital; Operating and Capital Expense Budgets.

4.7.1 Operating Capital. The Tribe shall be responsible for providing operating capital for the operation of the Enterprise in accordance with an approved Operating Budget.

4.7.2 Approval of Budgets. Manager shall, at least sixty (60) days prior to the scheduled Commencement Date, submit to the Tribe, for its approval, a proposed Operating Budget and Capital Expense Budget for the remainder of the current fiscal year. Thereafter, Manager shall, not less than sixty (60) days prior to the commencement of each full or partial fiscal year, submit to the Tribe, for its approval, proposed Budgets for the ensuing full or partial fiscal year, as the case may be. Manager shall meet with the Tribe to discuss the proposed Budgets and the Tribe's approval of the Budgets shall not be unreasonably withheld.

4.7.3 Budget Revisions. Manager may submit to the Tribe revisions in the Budgets from time to time, as necessary, to reflect any unpredicted significant changes, variables or events, or to include significant, additional, unanticipated items of income or expense. Manager may reallocate part or all of the amount budgeted with respect to any line item



to another line item and to make such other modifications to the Budget as Manager deems necessary; provided that the Manager may not increase the Budgets without the approval of the Tribe, which approval shall not be unreasonably withheld.

4.8 Contracting. In entering into contracts for the supply of goods and services for the Enterprise to the extent permitted by law, the Enterprise shall give preference to qualified members of federally recognized tribes. For purposes of this Agreement, qualified shall mean a member of a federally-recognized tribe or a business entity certified by the Tribe to be controlled by members of a federally-recognized tribe, who or which is able to provide services at competitive prices, has demonstrated skills and abilities to perform the tasks to be undertaken in an acceptable manner, in the Tribe's reasonably considered opinion, and can meet the reasonable bonding requirements of the Manager. The Manager shall provide written notice to the Tribe in advance of all such contracting, subcontracting, and construction opportunities. The Enterprise shall also give a second preference to suppliers of goods and services located in the state.

4.9 Internal Control Systems. The Manager shall maintain systems for monitoring the Gaming Enterprise (the "Internal Control Systems"), which shall be approved by the Gaming Commission prior to the Commencement Date. The Internal Control Systems shall comply with all Legal Requirements. Any significant changes to the Internal Control Systems shall be subject to review and approval by the Gaming Commission, which approval shall not be unreasonably withheld or delayed, prior to implementation. The Internal Control Systems shall include a surveillance system to be used to provide surveillance over Gaming areas, including all cash handling activities of the Gaming Enterprise to meet all Legal Requirements. The Gaming Commission shall have full access to the Internal Control Systems. The costs of the Internal Control Systems shall be an Operating Expense.

4.9.1 Auditor. The Tribe may retain an auditor to review the adequacy of the Internal Control Systems. The auditor so retained shall provide a written report to the Tribe and to the Manager regarding the adequacy of the Internal Control Systems. The cost of such review shall be an Operating Expense.

4.10 Banking and Bank Accounts.

4.10.1 Bank Accounts. The Parties shall agree upon a bank or banks for the deposit and maintenance of funds and shall establish such bank accounts as they deem appropriate and necessary in the course of business and as consistent with this Agreement.

4.10.1.1 Pre-Opening Bank Account. The Manager, with the Tribe's approval, shall establish for the benefit of the Enterprise in the Enterprise's name a pre-opening bank account to pay Start-Up and Pre-Opening Costs.

4.10.2 Daily Deposits to Depository Account. The Manager, with the Tribe's approval, shall establish for the benefit of the Enterprise in the Enterprise's name a depository account ("Depository Account"). The Manager shall collect all Gross Revenues and other proceeds connected with or arising from the operation of the Enterprise, the sale of all products, food and beverage, and all other activities of the Enterprise, except for cash required to maintain sufficient vault, cage and other readily assessable funds to meet the daily operating needs of the Enterprise, and shall deposit the related cash daily into the

Depository Account at least once during each 24-hour period except where deposit cannot be made during a 24-hour period because (i) it is a bank holiday or (ii) a Casualty Event prevents the deposit of proceeds in the place designated for deposit, in which case the deposit shall be made on the next business day. All money received by the Enterprise on each day that it is open must be counted at the close of operations for that day or at least once during each 24-hour period except to the extent that slot machine drop for that day is insufficient to warrant daily drops and count, and no payment or other distribution out of Gross Revenues shall be made before their deposit. The Parties agree to obtain a bonded transportation service to effect the safe transportation of the daily receipts to the bank, which expense shall constitute an Operating Expense.

4.10.3 Disbursement Account. The Manager, with the Tribe's approval, shall establish for the benefit of the Enterprise in the Enterprise's name one or more disbursement accounts (collectively, the "Disbursement Accounts"). Separate Disbursement Accounts shall be maintained for the various Reserve Funds. The Manager shall, consistent with and pursuant to the Budgets, have responsibility and authority for transferring funds from the Depository Account to the Disbursement Accounts and consistent with Section 6, for making all payments for Operating Expenses, Capital Expenses, debt service, the Management Fee and disbursements to Tribal Distribution Account from the Disbursement Accounts.

4.10.4 Minimum Casino Resort Bank Roll. Manager shall establish and maintain sufficient cash operating funds in the Enterprise vault and cage or other readily accessible funds to meet the daily operating needs of the Enterprise. The size of these funds shall be determined with due regard to the Operating Budget.

4.10.5 Capital Reserve Fund. The Manager shall establish and maintain for the benefit of and in the name of the Enterprise a Capital Reserve Fund to pay Capital Expenses in accordance with the Capital Expense Budget. Any interest earned on the Capital Reserve Fund shall be added to the Capital Reserve Fund.

4.10.6 Tribal Distribution Account. The Tribe shall establish an account in its name for the deposit of monies pursuant to Section 6.2.6 ("Tribal Distribution Account"). All proceeds of the Tribal Distribution Account shall be distributable to the Tribe without consent or approval of Manager.

4.10.7 Investments. The Manager may invest any of the funds in the Reserve Funds in bank accounts, treasury bills or other instruments guaranteed or insured by the United States with a term not to exceed two (2) years unless the Parties agree otherwise.

4.11 Insurance. The Manager, on behalf of the Tribe, shall obtain and maintain, or cause its agents to obtain and maintain, with insurance carriers licensed to do business in the State of California, insurance satisfactory to the Tribe covering the Property, the Casino Resort and the Enterprise, and naming the Tribe as the insured party, and the Enterprise, the Manager, and its Affiliates as additional insured parties or additional loss payees, as follows (the costs of which shall be an Operating Expense):

4.11.1 During the course of any new construction or substantial remodeling, builder's risk insurance on an "all risk" basis (including collapse) on a non-reporting form for full replacement value covering the interest of the Tribe in all work associated with the improvements, all materials and equipment on or about the Casino Resort, and any new construction or substantial remodeling of the Casino Resort. All materials and equipment in any off-site storage location intended for permanent use in the Casino Resort, or incident to the construction thereof, shall be insured on an "all risk" basis as soon as the same have been acquired for the Enterprise.

4.11.2 Commercial general liability insurance for all activities on, about or in connection with the improvements. The commercial general liability insurance shall include premises liability, contractor's protective liability on the operations of all subcontractors, completed operations and blanket contractual liability. The automobile liability insurance shall cover owned, non-owned and hired vehicles.

4.11.3 "All risk" insurance on the Casino Resort against loss by Casualty Event, extended coverage perils, collapse, water damage, vandalism, malicious mischief and all other risks and contingencies, in an amount equal to the actual replacement costs thereof, without deduction for physical depreciation, with coverage for demolition and increased costs of construction, and providing coverage in an "agreed amount" or without provision for co-insurance.

4.11.4 Worker's Compensation and Employer's Liability Insurance subject to the statutory limits of the State of California in respect of any work or other operations on, about or in connection with the Enterprise, provided that nothing in the Agreement shall grant any jurisdiction over the Enterprise or its employees to the State of California or any political subdivision thereof.

4.11.5 Business interruption insurance in an amount to cover the projected Operating Expenses, the Development Fee, the Management Fee, any loan payments, and Minimum Guaranteed Payment for (b) (4) or such greater amounts as to which the Parties may agree.

4.11.6 Such other insurance with respect to the Enterprise and in such amounts as the Parties from time to time may reasonably agree upon against such other insurable hazards that at the time are commonly insured against in respect of businesses and property similar to the Enterprise.

4.11.7 The insurance policies required under this Agreement, all have a standard noncontributory endorsement naming Manager as an additional loss payee. The insurance required under Section 4.11.2 above shall name the Manager as an additional insured. All insurance required hereunder shall contain a provision requiring at least sixty (60) days' prior written notice to the Manager and the Tribe before any cancellation, material changes or reduction shall be effective. Any deductibles must be approved by the Parties.

4.11.8 Each policy in which the Tribe is named as an insured shall include a requirement that the insurer shall not plead or assert the defense of sovereign immunity for any claim up to the policy limits. The Tribe shall not be liable beyond those limits.

4.12 Accounting and Books of Account.

4.12.1 Financial Statements. The Manager shall prepare and provide monthly, quarterly, and annual Enterprise financial reports and operating statements to the Gaming Commission, the Tribe and to such other governmental agencies as any applicable loan document, Compact or Legal Requirements may require. The Financial Statements shall comply with all Legal Requirements and shall include balance sheets, income statements, and statements of cash flow (statement of changes in financial position) for the Enterprise. Such statements shall include the Operating Budget and Capital Budget projections as comparative statements, and, after the first full year of operation, shall include comparative statements from the comparable period for the prior year of all revenues, and all other amounts collected and received and all deductions and disbursements made therefrom in connection with the Enterprise. All such statements shall be prepared in accordance with GAAP consistently applied.

4.12.2 Books of Account. The Manager shall maintain full and accurate books of account and records at the Property. The Gaming Commission, and any tribal government official authorized by law to have such access, shall have immediate access to the daily operations of the Gaming Enterprise, including the books and records, and shall have the right to inspect, examine, and copy all such books and supporting business records, and the right to verify the daily gross revenues and income from the Gaming Enterprise and shall have access to any other gaming-related information the Tribe deems appropriate. Such rights may be exercised through a duly authorized agent, employee, attorney, or independent accountant acting on behalf of the Gaming Commission or the authorized Tribal government agency, provided that the authority of said individual is first presented in writing to the Manager.

4.12.3 Accounting and Audit Standards. Manager shall establish and maintain satisfactory accounting systems and procedures that comply with all applicable Legal Requirements. Such accounting systems and procedures, at a minimum, shall (i) include an adequate system of internal accounting controls; (ii) permit the preparation of financial statements in accordance with GAAP; (iii) be susceptible to audit; (iv) permit the calculation and payment of the Management Fee; (v) allow the Enterprise, the Tribe and the NIGC to calculate the annual fee under 25 C.F.R. § 514.1, and such other payments as may be due any other governmental entity; and (vi) provide for any appropriate allocation of Operating Expenses or overhead expenses among the Tribe, the Enterprise, the Manager and any other user of shared facilities and services.

4.12.4 Annual Audit. An independent certified public accounting firm that is registered with the Public Accounting Oversight Board shall be selected and engaged exclusively by the Tribe for the purpose of performing an annual audit of the books and records of the Enterprise. Manager shall not recommend, select, or participate in the selection process of such auditor, and the Tribe shall not solicit the Manager for any recommendations or input in the Tribe's selection process. Said audit shall meet all Legal Requirements. The Gaming Commission, the NIGC and any other legally authorized government agency shall also have the right to perform special audits of the Enterprise on any aspect of the Enterprise and its operations at any time without restrictions. Copies of such audits shall be provided by the Tribe to all applicable federal (including the NIGC) and state

agencies, as may be required by law or the Compact, and may be used by the Manager for reporting purposes under federal and state securities laws, if required. The fees for the services of the independent auditor shall be an Operating Expense paid by Manager in accordance with Section 6.1.

4.13 Tribal Regulatory Costs. Prior to the Commencement Date and in accordance with Section 4.6.2, the Manager shall include in the Pre-Opening Budget, and shall fund as agreed to by the Parties, an amount approved by the Tribe as reasonably necessary to allow the Gaming Commission to prepare for the Casino Resort opening. The operations of the Gaming Commission shall, after the Commencement Date through expiration of the Term, be funded from the Operating Budget and Annual Plan as an Operating Expense of the Enterprise in an amount which reflects the reasonable cost to the Gaming Commission of regulating Gaming.<sup>(b)</sup>

(b) (4)

(b) (4)

(b) (4) (“Tribal Regulatory Budget”). Payments of one-fourth (1/4) of the Gaming Commission’s annual approved budget shall be payable to the Tribe’s bank account specified in a notice to the Manager pursuant to Section 9.2 on January 21st, April 21st, July 21st, and October 21st of each Fiscal Year. Such payments shall not be combined with any other payments to the Tribe. Nothing contained herein is intended to limit the Tribe’s or Gaming Commission’s prerogative to expend more money; provided, however, such amounts in excess of the Tribal Regulatory Budget must be tied to increased regulatory costs in order to constitute an Operating Expense, and any amounts in excess of the Tribal Regulatory Budget that are not tied to increased regulatory costs shall, upon notice by the Tribe, constitute a Tribal Expenditure. Concurrently with the delivery of the annual reports required pursuant to Section 4.12.4, the Gaming Commission shall prepare a reasonably detailed statement of the actual expenses of the Gaming Commission during such Fiscal Year which shall be reconciled against the amounts paid to the Gaming Commission pursuant to this Section 4.13. The Tribe shall cause the Gaming Commission to return to the Enterprise any amounts paid to the Gaming Commission pursuant to this Section 4.13 which are in excess of the Gaming Commission’s actual expenses during such Fiscal Year.

4.14 Tribal Court Costs. Prior to the Commencement Date and in accordance with Section 4.6.2, the Manager shall include in the Pre-Opening Budget, and shall fund as agreed to by the Parties, an amount approved by the Tribe as reasonably necessary to allow the Tribal courts to be prepared to hear any cases arising from the Casino Resort. After the Commencement Date through the end of the Term, a share of the operations of the Tribal court shall be funded from the Operating Budget and Annual Plan as an Operating Expense of the Enterprise. The Tribal court cost share shall be (i) <sup>(b) (4)</sup>

(b) (4)



(b) (4)

4.15 Scope of Operation. The Gaming Facility shall operate with (b) (4) slot machines, unless the Parties agree otherwise.

4.16 Retail Shops and Concessions. With respect to the operation of the shops and concessions located within the Casino Resort, the Tribe shall have absolute right to approve in advance the specific type or types of shops or concessions proposed by Manager to be authorized for inclusion in the Casino Resort.

5. Liens. Except as agreed to by the Parties in writing, the Tribe specifically warrants and represents to the Manager that during the Term the Tribe shall not act in any way whatsoever, either directly or indirectly, to cause or attempt to cause any party to become an encumbrancer or lienholder of the Property, the Enterprise or personal property of the Enterprise.

5.1.1 Exceptions. The Tribe shall have the right to grant security interests in (i) Enterprise revenues subordinated to the Loan and (ii) personal property purchased with the proceeds of the Loan, to the extent that granting such security interests is permissible under the Loan Agreement and if such security interest is granted to secure loans made for the benefit of the Casino Resort.

5.1.2 Enterprise Financing. The Manager warrants, represents and covenants further to the Tribe that the Manager shall cooperate with the Tribe in securing affordable Loans for the on-going operation and long term economic health of the Enterprise.

6. Calculation and Distribution of Funds.

6.1 Calculation of Gross Revenues and Payment of Operating Expenses, Minimum Guaranteed Monthly Payment. On or before the twentieth (20th) day after the end of each calendar month of operation during the Term, the Manager (i) shall calculate and report to the Tribe, Gross Revenues, Operating Expenses, and Net Revenues, together with the distributions made under this Section 6.1 and Section 6.2, for such month and the year to date, and (ii) shall pay, prior to making the distributions set forth in Section 6.2, the following in the following order of priority:

6.1.1 All Operating Expenses.

6.1.2 A minimum guaranteed monthly payment in the amount of (b) (4) (the "Minimum Guaranteed Monthly Payment"), and such payment shall have priority over the retirement of any Development and Construction Costs. Minimum Guaranteed Monthly Payments shall be charged against the Tribe's distribution of Net Revenues and, if there are insufficient Net Revenues in a given month to make the distribution, Manager shall advance the funds (from its own funds) necessary to compensate for the deficiency; and shall be reimbursed by the Tribe in the next succeeding month or months as a Recoupment Payment as provided in Section

6.2.2 herein; provided, however, that advances for the Minimum Guaranteed Monthly Payment may only be repaid from future Net Revenues during the Term of this Agreement, or after termination of this Agreement due to a Tribal default. No Minimum Guaranteed Monthly Payment shall be owed for any full month during which Gaming is suspended or terminated at the Gaming Facility, but shall be prorated based on the number of days that Gaming is conducted during any such month. The obligation to pay the Minimum Guaranteed Monthly Payment shall cease upon termination of this Agreement for any reason.

6.1.3 The Development Fee. The Development Fee shall be paid to the Developer in full out of the first proceeds of the Loan; provided, however, if for whatever reason the Development Fee is not paid in full out of the proceeds of the Loan, the Development Fee shall be paid in twenty-four (24) equal monthly payments beginning sixty (60) days after Commencement Date, or as otherwise agreed by the Parties in writing.

6.2 Distribution of Remaining Net Revenues. After the Operating Expenses, Minimum Guaranteed Monthly Payment and Development Fee have been paid or provided for as provided in Section 6.1, the Manager shall distribute the remaining Net Revenues for the preceding calendar month as follows in the following order of priority (to the extent Net Revenues for the current month are available for such purpose):

6.2.1 Repayment of Loan Principal. The Manager will then make any payments of principal required pursuant to the Loan Documents.

6.2.2 Recoupment Payments. Next, the Manager shall be entitled to and will distribute to Manager, any Recoupment Payments that may be owed, subject to the repayment limitations set forth in Section 6.1.2 above.

6.2.3 Management Fee. Next, the Manager will distribute to the Manager the Management Fee determined for the preceding calendar month; provided that if there are insufficient funds in any month to pay the Management Fee in full, then the shortfall shall be paid to the Manager in the next succeeding month or months as a Recoupment Payment.

6.2.4 Capital Reserve Fund. Next, the Manager will make any required payments to fund the Capital Reserve Fund in accordance with Section 4.10.5.

6.2.5 Tribal Expenditures. "Tribal Expenditures" shall mean those out of pocket costs and expenses incurred by the Tribe, which the Tribe and Manager agree do not constitute Operating Expenses but are otherwise incurred in connection with the ownership of the Property, the Facility and the Enterprise and which are (i) approved by the Parties at the time the Operating Budget and Annual Plan is approved pursuant to this Agreement or (ii) approved by the Parties during any Fiscal Year. In all cases such costs and expenses shall be reasonable in amount and necessary as determined by the Parties.

6.2.6 Tribal Disbursements. For each month, any Gross Revenues deposited into the Depository Account remaining after paying or providing for Operating Expenses and all

other payments and distributions in Sections 6.1 and 6.2, shall be transferred to the Disbursement Account and distributed to the Tribal Distribution Account.

6.3 Year-end Adjustment. Within thirty (30) days after the receipt of the audit for each fiscal year of the Enterprise, the Manager shall determine in consultation with the Tribe the correct amount of the Management Fee for such fiscal year<sup>(b) (4)</sup> and either remit to the Tribe or deduct from the next distribution to the Tribe, the amount of the over or underpayment of the Management Fee. Notwithstanding the foregoing, the Management Fee, together with all other sums paid to the Manager for services arising out of this Agreement,<sup>(b) (4)</sup>

6.4 Operative Dates. For purposes of this Section 6, the first year of operations shall begin on the Commencement Date and continue until the first day of the month following the first anniversary of the Commencement Date, and each subsequent year of operation shall be the 12-month period following the end of the previous year. Notwithstanding the foregoing, except as provided in Section 3.2.1, the Term shall not extend beyond<sup>(b) (4)</sup> years after the Commencement Date. Notwithstanding anything to the contrary, the fiscal year for the Enterprise shall coincide with the Tribe's fiscal year.

7. Trade Names, Trade Marks, and Service Marks.

7.1 Enterprise Name. The Enterprise shall be operated under such business name as the Tribe may select in consultation with the Manager (the "Enterprise Name").

7.2 Trade Names, Trade Marks and Service Marks. Prior to the Commencement Date, the Parties shall determine the other trade names, trade marks and service marks to be used by the Enterprise (the "Tribe's Marks") and from time to time during the Term, Manager agrees to erect and install, in accordance with local codes and regulations, all signs Manager deems necessary in, on or about the Casino Resort, including, but not limited to, signs bearing the Tribe's Marks. The costs of purchasing, leasing, transporting, constructing, maintaining and installing the required signs and systems shall be an Operating Expense or a Capital Expense and accounted for in accordance with GAAP. The Enterprise will be primarily identified with the Tribe's Marks. The Tribe shall have an absolute right to approval of any marquees placed on or about the Casino Resort.

7.3 Manager's Marks. The Tribe recognizes the exclusive right of ownership of Manager or its parents to all of Manager's service marks, trade marks, copyrights, trade names, patents or other similar rights or registrations now or hereafter held or applied for in connection therewith (collectively, the "Manager's Marks"). The Tribe hereby disclaims any right or interest therein, regardless of any legal protection afforded thereto. The Tribe acknowledges that all of Manager's Marks might not be used in connection with the Enterprise, and Manager shall have sole discretion to determine which of Manager's Marks shall be so used. The Tribe covenants that in the event of termination, cancellation or expiration of this Agreement, whether as a result of a default by Manager or otherwise, the Tribe shall not hold itself out as, or continue operation of the Enterprise, as a Manager's casino nor shall it utilize any of Manager's Marks or any variant thereof in the operation of the Enterprise. The Tribe agrees that Manager or its parent or their respective representatives may, at any time thereafter, enter the Casino Resort and may remove all signs, furniture, printed material, emblems, slogans or other distinguishing characteristics that



are now or hereafter may be connected or identified with Manager or that carry any Manager's Mark. The Tribe shall not use the Manager's or its parent's name, or any variation thereof, directly or indirectly, in connection with (i) a private placement or public sale of security or other comparable means of financing or (ii) press releases and other public communications, without the prior written approval of Manager or its parent.

7.4 Litigation Involving Manager's Marks. In the event the Enterprise and/or Manager are the subject of any litigation or action brought by anyone seeking to restrain or challenge the use of any Manager's Mark used by Manager for or in connection with the Enterprise, any such litigation or action shall be defended by the Manager, notwithstanding that Manager may not be named as a party thereto, and any expenses related thereto, shall be an Operating Expense. Notwithstanding anything to the contrary in this Section 7.4, the Tribe shall have an absolute right, but not an obligation, to exercise final authority over any and all lawsuits against the Enterprise and/or Gaming at the Enterprise.

8. Taxes.

8.1 State and Local Taxes. It is the Parties' position that the State of California and its local governments have no authority to impose any possessory interest, property, or sales tax on any Party, the Casino Resort or upon the Enterprise (or any aspect thereof) and the Parties and the Enterprise shall take all reasonable steps to resist any such unauthorized tax. The costs of such action and the compensation of legal counsel shall be an Operating Expense. Any tax paid (or remitted) and determined lawful by a court of competent jurisdiction shall constitute an Operating Expense. This Section shall in no manner be construed to imply that any Party to this Agreement or the Enterprise is liable for any such tax or that the same has consented to the taxing jurisdiction of the State and its local governments.

8.2 Tribal Taxes. The Tribe agrees that neither it, nor any Tribal Party, nor any agent, agency, or representative of the Tribe shall impose any taxes, fees, assessments, or other charges of any nature whatsoever on (i) Manager, Manager's interests herein, or any payments to Manager, (ii) any lender furnishing financing for any part of the Casino Resort or Enterprise, (iii) the Property, the Casino Resort, the Enterprise, Furniture and Equipment, or the revenues therefrom, or (iv) the Management Fee; provided, however, the Tribe may impose license fees reflecting reasonable out-of-pocket regulatory costs paid by the Tribe. The Tribe further agrees that neither it, nor any Tribal Party, nor any agent, agency, or representative shall impose any taxes, fees, assessments or other charges of any nature whatsoever on the salaries or benefits, or dividends paid to, any of the Manager's stockholders, officers, directors, or employees. Nothing in this Section 8.2 shall be construed to prohibit the Tribe from taxing the sale of goods or services by the Enterprise in amounts equivalent to any state or local taxes, including local transient occupancy taxes, that would otherwise be applicable but for the Tribe's status as an Indian Tribe. Nothing herein shall limit the Tribe's ability, pursuant to applicable Tribal law, to tax its members, Enterprise patrons, vendors, service providers or contractors; provided, however, the Parties agree that double taxation should be avoided at the Casino Resort. Accordingly, the Tribe agrees that a Tribal tax on activities of or within the Enterprise shall not result in a total tax rate applied to patrons that exceeds the applicable tax rate on comparable goods or services in the City of Elk Grove. This Section shall in no manner be construed to imply that any Party to this Agreement or the Enterprise is liable for any tax or that the same has consented to the taxing jurisdiction of the State and its local governments.

8.3 I.R.S. Safe Harbor for Tax Exempt Debt. The Tribe is an Indian tribal government that is treated as a state for certain purposes under the Internal Revenue Code. The Internal Revenue Code expressly contemplates that Indian tribes may offer tax exempt bonds pursuant to the authority detailed in 26 U.S.C. § 7871(f). The Tribe desires to offer tribal economic development bonds in relation to the hotel components of the Casino Resort. It is the intent of the Parties that this Agreement, or another agreement relating to the Hotel portion of the Casino Resort, fall within the Internal Revenue Service's safe harbor conditions under which a management contract does not result in private business use of a property financed with governmental tax exempt bonds. The Manager agrees that, upon request of the Tribe, it shall actively cooperate in good faith and with commercially reasonable efforts to promptly amend this Agreement and enter into a separate management agreement with respect to the Hotel portion of the Casino Resort, as reasonably necessary or advisable to ensure that an agreement between the Tribe and the Manager does not result in private business use of hotel portions of the Casino Resort. The Parties acknowledge and agree that any amendment to this Agreement agreed to pursuant to this provision shall not be effective until such time as approved by the Chairman.

9. General Provisions.

9.1 Governing Law. This Agreement shall be interpreted in accordance with the laws of the State of California. The arbitration provisions of this Agreement shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq.

9.2 Notice. Any notice required to be given pursuant to this Agreement shall be delivered to the appropriate Party by certified mail return receipt requested or electronic mail (e-mail), provided, however, notices and other communications sent by e-mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), addressed as follows:

If to the Tribe:

Chairperson  
Wilton Rancheria  
9728 Kent St.  
Elk Grove, CA 95624

If to the Manager:

Brian A. Larson  
Executive Vice President,  
Secretary and General Counsel  
Boyd Gaming Corporation  
3883 Howard Hughes Parkway  
Ninth Floor  
Las Vegas, Nevada 89169  
Direct: 702 792-7281  
Fax: 702 792-7335  
brianlarson@boydgaming.com

or to such other different addresses as the Manager or the Tribe may specify in writing using the notice procedure called for in this Section 9.2. Any such notice shall be deemed given three (3) days following deposit in the United States mail or upon actual delivery, whichever occurs first.

9.3 Relationship. This Agreement shall not be construed as creating a joint venture between the Tribe and the Manager. Manager shall be deemed to be an independent contractor of the Tribe for all purposes hereunder. Neither Party shall have the power to bind or obligate the other Party except as set forth in this Agreement.

9.4 Defenses. Except for disputes between the Tribe and Manager and disputes involving a claim for damages less than (b) (4) the Tribe and Manager shall agree upon the bringing and/or defending and/or settling any claim or legal action brought against the Enterprise, the Manager, or the Tribe, individually, jointly or severally in connection with the operation of the Enterprise, including the retention and supervision of legal counsel. The Manager shall control the defense, including settlement decisions and retention and supervision of legal counsel, of claims brought against the Enterprise for damages less than (b) (4). All liabilities, costs, and expenses, including attorneys' fees and disbursements, incurred in defending and/or settling any such claims or legal actions which are not covered by insurance shall be an Operating Expense. With respect to claims handled by the Manager for damages (b) (4), the Manager shall provide a quarterly report to the Tribe of each claim, its status and a proposed resolution. Nothing contained in this Section 9.4 shall be deemed to be or constitute a waiver of the Tribe's sovereign immunity. Notwithstanding anything to the contrary in this Section 9.4, the Tribe shall have an absolute right, but not an obligation, to exercise final authority over any and all lawsuits against the Enterprise and/or Gaming at the Enterprise.

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

9.6 Captions. The captions for each Section are intended for convenience only.

9.7 Interest. Any amount payable to a Party by the other Party that has not been paid when due, except advances by Manager to make the Minimum Guaranteed Monthly Payment or other Recoupment Payment because of insufficient Net Revenues, shall accrue interest at the same rate as calculated under this Section and shall be treated according to GAAP. Unless otherwise agreed by the Parties, such interest rate shall be the (b) (4).

9.8 Third-Party Beneficiary. This Agreement is exclusively for the benefit of the Parties and it may not be enforced by any party other than the Parties and shall not give rise to liability to any third party other than the authorized successors and assigns of the Parties.

9.9 Survival of Covenants. Any covenant, term or provision of this Agreement which, in order to be effective, must survive the termination of this Agreement, shall survive any such termination.

9.10 Estoppel Certificate. Each Party shall furnish to the other Party, from time to time upon request, an estoppel certificate in such reasonable form as the requesting Party may request stating whether there have been any defaults under this Agreement known to the Party furnishing the estoppel certificate and such other information relating to the Enterprise as may be reasonably requested.

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

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

9.13 Successors, Assigns and Subcontracting. The benefits and obligations of this Agreement shall inure to and be binding upon the Parties and their respective successors and permitted assigns. Subject to the Tribe's approval, which approval shall not be unreasonably withheld, the Manager may assign or subcontract Manager's rights, interests or obligations hereunder to Boyd Gaming Corporation or to any direct or indirect wholly-owned subsidiary or affiliate of Boyd Gaming Corporation; provided such assignee or subcontractor agrees to be bound by the terms and conditions of this Agreement, is licensed by the Gaming Commission if such license is required by the Gaming Ordinance, and the assignment complies with all applicable NIGC regulations and findings of suitability by the NIGC. This Agreement may only be assigned or subcontracted by the Manager with the prior written approval of the Tribe, and provided such assignee or subcontractor agrees to be bound by the terms and conditions of this Agreement, is licensed by the Gaming Commission if such license is required by the Gaming Ordinance, and the assignment complies with all applicable NIGC regulations and findings of suitability by the NIGC. The Tribe may assign or subcontract its rights, interests or obligations under this Agreement to a duly authorized Tribal entity (excluding the Gaming Commission) established as an arm of the Tribe, provided that this Agreement shall revert to the Tribe in the event such Tribal entity is terminated, disestablished, or de-authorized by an act of the Tribe. Any assignment by either Party shall not prejudice the rights of the other Party under this Agreement. No assignment or subcontracting authorized hereunder shall be effective until all necessary government approvals have been obtained. For purposes of this Agreement, an assignment shall include any change of control by acquisition, asset sale, merger, or operation of law of Manager that causes Manager to no longer be a direct or indirect wholly-owned subsidiary of Boyd Gaming Corporation. Other than as expressly provided in this Section 9.13, any attempted assignment or subcontracting without prior written consent shall be void. The right to consent of the Parties contained in this Section 9.13 shall be absolute. Any successor, assignee, or subcontractor with a direct or indirect financial interest in, or management responsibility for, this Agreement, shall submit an application for a finding of suitability or approval, as appropriate, by the Chairman before acquiring such financial interest or assuming such management responsibilities.

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

9.15 Transition Plan. If this Agreement terminates for any reason other than a material breach by the Tribe, and the Tribe and the Manager decide not to enter into, or are unable to agree to the terms of, a new management agreement, then the Tribe and the Manager shall wind up their business relationship under this Agreement in accordance with the following terms.

9.15.1 Upon determination by the Tribe or the Manager that this Agreement has terminated, or will terminate on a certain date, such Party shall give notice to the other Party of an intent to invoke the transition process in this Section 9.15 ("Transition Notice"). The Transition Notice shall provide a transition date ("Transition Date") that is (i) ten (10) calendar days from the date of the Transition Notice (if the Agreement has terminated), (ii) the date upon which the Agreement shall terminate (if the Agreement has not already terminated), or (iii) any other date that is agreed upon by the Parties. The Parties shall conduct themselves in good faith to facilitate an orderly and seamless transition process. Obligations under Section 9.15.2 through 9.15.5 shall be performed by the responsible Party on or before the Transition Date.

9.15.2 To the extent the Manager controls any operation or management of the Enterprise, including with respect to employees, accounting, human resources, payroll functions, marketing, and patron data, the Manager shall provide a transition memorandum to the Tribe that outlines key information needed to assume responsibility for such operation or management.

9.15.3 Records and systems relating to the operation and management of the Enterprise (excluding the Manager's Confidential and Proprietary Information developed and acquired by the Manager through activities unrelated to the Enterprise or this Agreement, which shall remain the sole and exclusive property of the Manager) shall be the property of the Tribe ("Tribe's Records and Systems"). If any such records and systems are located on the Manager's property, the Manager shall deliver them to the Tribe. If any such Records and Systems are located on the Tribe's property, the Manager shall not be entitled to remove them from the Tribe's property without express written permission of the Tribe.

9.15.4 The Manager shall bear the expense of the removal of all exterior and interior signage that bears Manager's Marks. The Tribe shall bear the expense of removing all other items bearing Manager's Marks and the cost of acquiring signage equipment and other items to be used in the operation of the Enterprise after the termination of this Agreement.

9.15.5 The Manager shall provide all Enterprise patron data (which data is a part of the Tribe's Records and Systems) to the Tribe in machine readable form, at the election of the Tribe, and such data shall be removed from the Manager's database and may not be used by the Manager for any purpose, except to the extent the Parties agree in writing.

9.15.6 The Manager, prior to the third anniversary of the Effective Date, shall implement a management training program approved by the parties that is intended to facilitate the transition of management to the Tribe.



9.16 Confidential and Proprietary Information.

9.16.1 Confidential Information. Each Party agrees that any information received concerning the other Party during the performance of this Agreement, regarding the Party's organization, financial matters, marketing plans, or other information of a proprietary nature, will be treated by the other Party in full confidence and except as required to allow a Party to perform its respective covenants and obligations hereunder, will not be revealed to any other persons, firms or organizations except in the course of legal proceedings, including arbitration as permitted by the court, arbitrator or arbitration panel. This provision shall survive the termination of this Agreement for a period of two (2) years.

9.16.2 Proprietary Information of Manager. Manager has the sole and exclusive right, title and ownership to (i) certain proprietary information, techniques and methods of operating gaming businesses; (ii) certain proprietary information, techniques and methods of designing games used in gaming businesses; (iii) certain proprietary information, techniques and methods of training employees in the gaming business; and (iv) certain proprietary business plans, projections and marketing, advertising and promotion plans, strategies, and systems, all of which have been developed and/or acquired over many years through the expenditure of time, money and effort and which Manager and its Affiliates maintain as confidential and as a trade secret(s) (collectively, the "Confidential and Proprietary Information"). Upon the termination of this Agreement, the Tribe shall maintain the confidentiality of such Confidential and Proprietary Information, including but not limited to, documents, notes, memoranda, lists, computer programs and any summaries of such Confidential and Proprietary Information for the period required in Section 9.16.1 above.

9.17 Employment Solicitation Restriction Upon Termination. Neither the Tribe nor any Tribal Party shall (i) solicit the employment of Manager's employees at any time during the Term without Manager's prior written approval or (ii) employ such personnel (b) (4) without Manager's prior written approval.

9.18 Patron Dispute Resolution. Manager shall submit all patron disputes concerning play to the Gaming Commission pursuant to the Tribal Gaming Ordinance, and the regulations promulgated thereunder. All other claims by patrons shall be submitted by the Manager in accordance with dispute resolution provisions of the Compact and related Tribal law. The costs of dispute resolution, including the pro rata share of the costs of a Tribal court, shall be an Operating Expense.

9.19 Modification. Any change to or modification of this Agreement must be in writing signed by both Parties and shall be effective only upon approval by the Chairman of the NIGC, the date of signature of the Parties notwithstanding. Manager shall submit to the Chairman any change to the list of individuals or entities with management responsibility for, or direct or indirect financial interest in, this Agreement, previously found suitable. Any new individual or entity who is required to be found suitable under 25 C.F.R. § 535.1(c)(4)(i) must be found suitable by the Chairman prior to assuming management responsibility for, or acquiring a direct or indirect financial interest in, this Agreement.

9.20 Regulatory Notice Provision. Except where the Tribal Gaming Ordinance, the Compact, or any other applicable law or regulation provides for immediate action in less than thirty (30) days' time, the Tribe or the Gaming Commission shall provide the Manager notice of any alleged violation of the Tribal Gaming Ordinance and thirty (30) days opportunity to cure before the Gaming Commission may take any action based on such alleged violation.

9.21 Maximum Amount for the Recoupment of Development and Construction Costs. The maximum dollar amount for the recoupment of Development and Construction Costs shall be (b) (4) unless otherwise agreed in writing by the Parties. "Development and Construction Costs" has the meaning as ascribed to it in that certain Development Agreement by and between the Tribe and East West Gaming, LLC, dated July 20, 2012, as may be amended.

10. Representations and Warranties.

10.1 Representations and Warranties of the Manager. The Manager represents and warrants to the Tribe that:

10.1.1 Organization. The Manager is a corporation duly formed and validly existing under the laws of the State of Nevada.

10.1.2 Authority. The Manager has the full legal right and authority to enter into this Agreement, and upon approval of this Agreement by the Chairman of the NIGC, to perform its obligations under this Agreement, and to consummate all other transactions contemplated by this Agreement.

10.1.3 Ability to Perform. The Manager has the requisite skills, resources, experience, and expertise to perform its duties under this Agreement.

10.1.4 Binding Obligation. This Agreement has been duly executed and delivered by the Manager and upon approval of this Agreement by the Chairman of the NIGC, constitutes a legal, valid and binding obligation of the Manager, enforceable against the Manager in accordance with its terms, except as enforceability may be limited by future bankruptcy, insolvency or similar proceedings, limitations on rights of creditors generally and principles of equity, and assuming such agreements are binding against the other parties thereto.

10.1.5 No Litigation. Upon approval of this Agreement by the Chairman, there are no judgments entered, or actions, suits, investigations or proceedings pending, or to the knowledge of the Manager, threatened against Manager, its Affiliates, or any of its assets or properties that could have a material adverse effect on its ability to enter into or perform this Agreement.

10.1.6 No Violation or Conflict. The execution, delivery and, upon approval of this Agreement by the Chairman of the NIGC, the performance by the Manager of this Agreement does not violate any Legal Requirements applicable to the Manager.

10.1.7 No Consents. No consent from any governmental authority arising from any Legal Requirements not heretofore obtained by the Manager is required for the Manager to execute, deliver and perform its obligations hereunder; provided that Manager makes

no representation or warranty with respect to any consent that may be required by the Tribe, the State of California, the NIGC or the BIA.

10.1.8 Full Disclosure. No representation or warranty of the Manager in this Agreement and no report or statement delivered to the Tribe by the Manager, contains any untrue statement or omits to state a material fact necessary to make any such representation, warranty, report or statement, in light of the circumstances in which they were made, not misleading.

10.1.9 Undue Influence in Affairs of the Tribe. The Manager agrees not to wrongfully and unduly influence or attempt to wrongfully and unduly influence the internal affairs or government decisions of the Tribe for Manager's gain by offering cash incentives or by making written or oral threats to the personal or financial status of any tribal official or person seeking a tribal official position. Furthermore, the Manager agrees to not attempt to wrongfully and unduly influence tribal elections. If any such wrongful and undue influence is alleged by the Tribe in writing and determined by an arbitrator pursuant to Section 16 that the Manager has wrongfully and unduly influenced the internal affairs of the Tribe and has not taken sufficient action to cure and prevent such actions, that finding of wrongful and undue influence shall be grounds for immediate termination of the Agreement. The Manager shall be entitled to immediate written notice and a complete copy of any such allegation. Nothing herein shall be construed to preclude or prohibit the Tribe from lawfully permitting Manager to carry out its duties under this Agreement or take actions in the normal course of business of the Tribe that relate to the Enterprise.

10.2 Representations and Warranties by the Tribe. The Tribe, represents and warrants to the Manager that:

10.2.1 Organization. The Tribe is a federally recognized tribe organized under its Constitution and has conducted its affairs in a manner consistent with an Indian tribe within the meaning of IGRA.

10.2.2 Authority and Power. The Tribe has taken all actions required by Tribal law without the necessity of further action to authorize the execution, delivery and performance of this Agreement. The Tribe's Chairperson has all requisite power and authority to enter into this Agreement, to bind the Tribe and Tribal Parties hereunder, to perform its obligations under this Agreement, and to consummate all other transactions contemplated by this Agreement.

10.2.3 Binding Obligations. This Agreement (including but not limited to, the waivers of sovereign immunity in Section 16) has been duly executed and delivered by the Tribe and upon approval of this Agreement by the Chairman of the NIGC, is a legal, valid and binding obligation of the Tribe, enforceable against the Tribe in accordance with its terms, except as enforceability may be limited by future bankruptcy, insolvency or similar proceedings, limitations on rights of creditors generally and principles of equity, and assuming the foregoing agreements are binding against the other parties thereto.

10.2.4 Property. Upon the Property being placed into trust for Gaming purposes, the Tribe, will take all action it believes is necessary, and will use its best efforts to ensure



that the Property will constitute "Indian lands" over which the Tribe has jurisdiction as that term is defined in IGRA on the date the Property is taken into trust for the Tribe.

10.2.5 Gaming Rights. The Tribe, will diligently negotiate in good faith with the State of California to enter into a Compact granting the Tribe the right to engage in Class III Gaming at the Property to the extent set forth in the Compact.

10.2.6 Gaming Licenses. Tribal Parties have granted all licenses, permits, approvals or other authority required from any Tribal Party to permit the Manager to enter into this Agreement and perform its obligations under this Agreement.

10.2.7 No Material Negative Obligations. To the best knowledge of the Tribe, there are no outstanding obligations owing by the Tribe or affecting either the Property or contemplated Enterprise, whether arising from contracts, instruments, orders, judgments, decrees or otherwise, that are likely to materially and adversely affect the Property or the contemplated Enterprise or the Manager's obligations or rights under this Agreement.

10.2.8 No Violation or Conflict. The execution, delivery and, upon approval of this Agreement by the Chairman of the NIGC, the performance by the Tribe of this Agreement does not violate any Legal Requirements.

10.2.9 No Litigation. Except for those matters set forth in Exhibit "B", there are no judgments entered, or actions, suits, investigations or proceedings pending against the Tribe, that could have a material adverse effect on the Property, the Enterprise, the Tribe's ability to enter into or perform this Agreement, or the Manager's obligations or rights under this Agreement.

10.2.10 No Consents. No consent from any governmental authority arising from any Legal Requirements not heretofore obtained by the Tribe is required to execute, deliver and perform its obligations hereunder; provided, however, and notwithstanding any other provision herein to the contrary, the Tribe makes no representation, warranty or covenant regarding any consent that may be required by the State of California, the NIGC or the BIA.

10.2.11 Full Disclosure. No representation or warranty of the Tribe in this Agreement and no report or statement delivered to the Manager by or on behalf of the Tribe, contains any untrue statement or omits to state a material fact necessary to make any such representation, warranty, report or statement, in light of the circumstances in which they were made, not misleading. The Tribe has fully disclosed the existence and terms of all agreements and Legal Requirements, written or oral, relating to the Property and the Enterprise and Gaming to be conducted by the Tribe.

10.2.12 No Improper Influence. No payments have been made by or on behalf of the Manager to any Tribal Official for the purpose of obtaining any special privilege, gain, advantage or consideration for the Manager. "Tribal Official" means any member of the Tribal Council, the Tribe's Chairperson, the Tribe's Vice-Chairperson, the governing body of any Tribal Party, the Gaming Commission or any individual residing in the same

household who is related as an ancestor, spouse, lineal descendent or sibling of the foregoing.

11. Covenants.

11.1 Covenants of the Manager. The Manager covenants and agrees as follows:

11.1.1 Additional Documents. The Manager shall execute any additional instruments as may be reasonably required to carry out the intent of this Agreement, fulfill Manager's duties and obligations hereunder, or to perfect or give further assurances of any of the rights granted or provided for under this Agreement.

11.2 Covenants of the Tribe. The Tribe, covenants and agrees as follows:

11.2.1 Additional Documents. The Tribe and the Tribal Parties shall execute any additional instruments as may be reasonably required to carry out the intent of this Agreement, fulfill the Tribe's or Tribal Party's duties and obligations hereunder, or to perfect or give further assurance of any of the rights granted or provided for under this Agreement.

12. Termination.

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

12.2 Termination for Cause.

12.2.1 Material Breach. Either Party may terminate this Agreement if the other Party commits or allows to be committed any material breach of this Agreement. A material breach of this Agreement means a failure of either Party to perform any material duty or obligation on its part for thirty (30) consecutive days after receiving written notice of breach from the other Party. Neither Party may terminate this Agreement on grounds of material breach unless it has provided written notice to the other Party of its intention to terminate this Agreement and within thirty (30) days following receipt of such notice the defaulting Party fails (i) to cure the default or (ii) if the default cannot be cured in thirty (30) days, to commence curing the default and thereafter diligently proceed to cure the default. Discontinuance or correction of a material breach shall constitute a cure thereof.

Notwithstanding the foregoing, the Parties shall have the following rights to terminate this Agreement by written notice if: (x) the Tribe through its intentional actions, causes any payment to Manager to not be made within the time specified in this Agreement, following ten (10) days after written notice has been given by the Manager to the Tribe; (y) the Manager fails to make any payment to the Tribe, including but not limited to any Minimum Guaranteed Monthly Payment, within the time specified in this Agreement, and following ten (10) days after written notice of such failure has been given by the Tribe to the Manager; or (z) the Manager has been convicted of a criminal felony or misdemeanor offense in the performance of the Manager's duties hereunder; provided, however, that the Tribe may not terminate this Agreement based on a director or officer's conviction where the Manager terminates such individual within ten (10) days of

receiving written notice from the Tribe of the Manager's failure to terminate such person's employment. In the event that a material breach by the Manager requires immediate action to conform with Legal Requirements, the Tribe shall be entitled to take such immediate action, and such action shall be consistent with the terms of this Section 12.2, to the extent practicable.

For purposes of this Agreement, a material breach by a Party includes a breach or failure of the Party to perform any of the duties, actions, obligations or responsibilities of the Party set forth in this Agreement.

12.2.2 Consequences of the Manager's Breach. In the event of the termination of this Agreement by the Tribe for cause under this Section 12.2, the Manager shall not, prospectively from the date of termination have the right to its Management Fee from the Enterprise, but such termination shall not affect the Manager's rights relating to recoupment and reimbursement of monies owed to the Manager under this Agreement. Any Net Revenues accruing through the date of termination shall be distributed in accordance with Section 6 of this Agreement. The Manager shall indemnify and hold the Tribe harmless against liabilities arising from the Manager's breach, but only insofar as these liabilities result from acts within the direct control of the Manager or its agents. The Manager and the Tribe acknowledge and agree that termination of this Agreement may not be a sufficient or appropriate remedy for breach by the Manager, and further agree to resolve all disputes in accordance with Section 16.7. The Tribe shall, upon breach of this Agreement by the Manager, have the right to pursue such remedies (in addition to termination) at law or in equity as the Tribe determines are best able to compensate it for such breach, including, without limitation, specific actions to require payment of the Minimum Guaranteed Monthly Payment pursuant to Section 6.1.2. The Manager acknowledges and agrees that there may be irreparable harm to the Tribe and that damages will be difficult to determine if the Manager commits a material breach, and the Manager therefore further acknowledges that an injunction and/or other equitable relief may be an appropriate remedy for any such breach. In any event, the Tribe shall have the right to all payments due to the Tribe, including the Minimum Guaranteed Monthly Payment, accruing until the date of termination. Notwithstanding anything in this Agreement to the contrary, in no event shall any award to the Tribe for damages include punitive, incidental, consequential, special or exemplary damages, including, without limitation, lost profits.

12.2.3 Consequences of the Tribe's Breach. In the event of termination of this Agreement by the Manager for cause under this Section 12.2, the Manager shall not be required to perform any further services under this Agreement and the Tribe shall indemnify and hold the Manager harmless against liabilities arising from the Tribe's breach, but only insofar as these liabilities result from acts within the direct control of the Tribe or its agents. The Manager and the Tribe acknowledge and agree that termination of this Agreement may not be a sufficient or appropriate remedy for breach by the Tribe, and further agree to resolve all disputes in accordance with Section 16.7. The Manager shall, upon breach of this Agreement by the Tribe, have the right to pursue such remedies (in addition to termination) at law or in equity as the Manager determines are best able to compensate it for such breach, including, without limitation, specific actions to require payment of the Management Fee pursuant to Section 6.2.3. The Tribe acknowledges and

agrees that there may be irreparable harm to the Manager and that damages will be difficult to determine if the Tribe commits a material breach, and the Tribe therefore further acknowledges that an injunction and/or other equitable relief may be an appropriate remedy for any such breach. In any event, the Manager shall have the right to its Management Fee accruing until the date of termination. Notwithstanding anything in this Agreement to the contrary, in no event shall any award to the Manager for damages include punitive, incidental, consequential, special or exemplary damages, including, without limitation, lost profits.

12.2.4 An election to pursue damages or to pursue specific performance of this Agreement or other equitable remedies while this Agreement remains in effect shall not preclude the injured Party from providing notice of termination pursuant to this Section 12.2.

12.3 Involuntary Termination Due to Changes in Legal Requirements. The Parties intend that the establishment and operation of the Enterprise conforms to and complies with all Legal Requirements. If during the Term, a final judgment of a court of competent jurisdiction (after all appeals from such judgment have been exhausted) determines Gaming at the Enterprise is unlawful, the Parties shall use their respective good faith best efforts to amend this Agreement in a mutually satisfactory manner that will comply with the change in applicable laws and not materially change the rights, duties and obligations of the Parties; provided, however, that any amendment to address invalid or unenforceable terms, or the waiver of any provision, will be subject to approval by the Chairman to the extent required by IGRA. In the event an amendment or modification cannot be legally effected following exhaustion of all good faith best efforts (including the lapse of all legal proceedings and appeal periods without favorable results) and Gaming at the Gaming Facility becomes unlawful by such final determination, then either Party shall have the right to terminate such suspended Agreement upon written notice to the other Party, and neither Party shall be obligated to pay any termination fee or other penalty because of the termination.

13. Consents and Approvals.

13.1 Tribe. Where approval or consent or other action of the Tribe is required, such approval shall mean the written approval of the Tribe's Chairperson. Where approval or consent or other action of the Gaming Commission is required, such approval shall mean the written approval of the Gaming Commission. Any such approval, consent or action shall not be unreasonably withheld or delayed; provided the foregoing does not apply where a specific provision of this Agreement allows the Tribe an absolute right to deny approval or consent or withhold action.

13.2 Manager. Where approval or consent or other action of the Manager is required, such approval shall mean written approval. Any such approval, consent or action shall not be unreasonably withheld or delayed; provided the foregoing does not apply where a specific provision of this Agreement allows the Manager an absolute right to deny approval or consent or withhold action.

14. Damage or Destruction by Casualty Event, Condemnation.

14.1 Casualty Event; Partial Condemnation. If, during the Term, (i) the Casino Resort is damaged or destroyed by fire, war, earthquake, lightning, or other natural disasters, act of God, act of terrorism or other casualty ("Casualty Event"), or (ii) the Property or the Casino Resort is partially condemned by a governmental agency with the lawful authority to carry out such an action, other than the Tribe or a Tribal Party ("Partially Condemned"), and (iii) the Tribe, in its absolute and sole discretion, decides to reconstruct the Casino Resort, then (iv) the Manager shall use the proceeds of the applicable insurance policies obtained and maintained in accordance with Section 4.11 to reconstruct those portions of the Casino Resort that are damaged or destroyed or Partially Condemned to a condition at least comparable to that before the Casualty Event or partial condemnation occurred. If the insurance or condemnation proceeds are insufficient to reconstruct those portions of the Casino Resort that are damaged or destroyed or Partially Condemned to such condition where Gaming can once again be conducted, the Tribe, in its sole discretion and with the assistance of Manager, may secure such additional funds as are necessary to reconstruct the Gaming Facility to such condition.

14.2 Total Condemnation. In the event that the Enterprise or the Property is condemned in total by a governmental agency with the lawful authority to carry out such an action, other than the Tribe or a Tribal Party ("Total Condemnation"), except to the extent otherwise required to be reserved or applied to pay amounts with respect to a Loan under any Loan Document, the proceeds from any such condemnation award shall be applied to pay the Tribe, as owner, for the value of the land, buildings, and fixtures; provided, however, that any condemnation award that includes lost profits shall be shared between the Parties. (b) (4)

(b) (4)

(b) (4) The Parties shall retain all money previously paid under Section 6 of this Agreement.

14.3 Prohibition on Tribal Condemnation. It shall be a material breach by the Tribe if the Tribe or a Tribal Party attempts to condemn or condemns (whether partially or completely), the Enterprise, the Casino Resort, or the Property or any part or parts thereof.

15. Defense of Litigation. If the Enterprise, the Tribe, the Manager, or any employee of the Enterprise or any employee of Manager is sued by any person who is not a Party, including claims involving tort or breach of contract, or is alleged by any such person to have engaged in unlawful or discriminatory acts in connection with the operation of the Enterprise, the Tribe, or the Manager, as appropriate, shall defend such action. All costs of such litigation that are not covered by insurance, shall constitute an Operating Expense. Nothing in this Section 15 shall be construed to waive or limit the Tribe's sovereign immunity.

16. Dispute Resolution.

16.1 Tribe's Consent to Suit. The Tribe expressly, unequivocally and irrevocably provides a limited waiver of its sovereign immunity from suit, arbitration and legal process as provided in this Agreement.

16.2 Scope of Waiver. The Tribe expressly, unequivocally and irrevocably waives its sovereign immunity (and any defense based thereon) from unconsented suit and arbitration in the forums identified in Section 16.3 and 16.7 for the purpose of permitting the Manager (and no other Persons) to seek the following actions and remedies (i) arbitration pursuant to Section 16.7, (ii) the enforcement of any determination, order or award issued by arbitration or a court identified in Section 16.3, including without limitation, an award of actual damages, an order requiring the Tribe to make payments required under this Agreement, and an order requiring or prohibiting the Tribe to take certain action, (iii) an action to compel arbitration pursuant to this Agreement, (iv) an action to interpret and/or enforce the provisions of this Agreement and to resolve disputes, controversies or claims arising or related to any of the foregoing, (v) any counterclaims against or relating to claim(s) brought by the Tribe, and (vi) injunctive relief pursuant to this Agreement; provided that the Tribe does not waive its sovereign immunity so as to permit the enforcement of any award of consequential, incidental or punitive damages.

16.3 Waivers Applicable to Following Forums. The Tribe expressly, unequivocally and irrevocably waives its sovereign immunity (and any defense based thereon) for the actions identified in Section 16.2 in (i) arbitration pursuant to Section 16.7 and (ii) the following courts: the United States District Court for the Eastern District of California, the United States Circuit Court of Appeals for the Ninth Circuit and the United States Supreme Court, and if the United States District Court for the Eastern District of California lacks jurisdiction, the courts of the Sacramento County and an appropriate state appellate courts. The Tribe hereby expressly, unequivocally and irrevocably: (i) accepts the jurisdiction of the aforesaid courts, (ii) agrees to be bound by any order or final judgment (after any and all appeals) of any such courts, (iii) waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any suit, action or proceedings brought in any such court has been brought in any inconvenient forum, (iv) waives any claim or right to which it may possess to the exercise of jurisdiction by any Tribal forum (including without limitation, any Tribal court now existing or that may hereafter be established) including without limitation, any determination that any Tribal forum has jurisdiction to determine the scope of such Tribal forum's jurisdiction, even if such Tribal forum would have concurrent jurisdiction over the matter, (v) waives any requirement of exhaustion of Tribal remedies in any Tribal forum (including without limitation, any Tribal court now existing or that may hereafter be established), and agrees that it will not present any affirmative defense based on any alleged failure to exhaust such remedies, and (vi) authorizes any governmental authorities who have the right and duty under applicable law to take any action authorized or ordered by any such courts, to take such action to give effect to any order or judgment entered, ordered or granted in accordance with this Agreement, and expressly waives any right to exclude such authorities or persons from the Property.

16.4 No Revocation of Sovereign Immunity Waiver. The Tribe agrees not to revoke or further limit, in whole or in part, its limited waiver of sovereign immunity contained in this Agreement and shall not in any way attempt to revoke or further limit, in whole or in part, such waiver of sovereign immunity. In the event of any such revocation, further limitation or attempted revocation or further limitation, the Tribe expressly recognizes and agrees that there remains no adequate remedy at law available to the Manager, and the Manager will be irreparably injured upon any revocation hereof, and the Tribe hereby consents to the entry of appropriate injunctive



relief consistent with the terms and conditions of the Agreement. In the event of any attempted further limitation or revocation of the limited waiver of sovereign immunity granted herein by the Tribe, the Manager may immediately seek judicial injunctive relief as provided in this limited waiver and Agreement without pursuing arbitration under Section 16.7. Any action seeking injunctive relief hereunder shall be brought in the courts identified in Section 16.3.

16.5 Waiver of Immunity of Gaming Commission and Tribal Parties. In the event an arbitrator or any court identified in Section 16.3 determines that the Gaming Commission or any other Tribal Party is a necessary party to an action or claim brought under this Agreement, the Tribe shall cause that Tribal Party to waive its sovereign immunity in the same manner and to the same extent as the Tribe has waived its sovereign immunity in this Agreement and the Tribe shall not assert in any arbitration or court proceeding that any Tribal Party that has not waived its sovereign immunity is an indispensable or necessary Party.

16.6 Service of Process. The Tribe hereby appoints the Chairperson of the Tribe, as its respective authorized agent on which any and all legal process may be served in any action, suit or proceeding which is brought in any court referenced above and hereby expressly waives its sovereign immunity (and any defense based thereon) with respect to such legal process. The Tribe agrees that service of process upon such agent, together with notice of such service given as provided in Section 9.2, shall be deemed to be effective service of process upon it in any action, suit or proceeding referred to in this Section. If, for any reason, such agent shall cease to be available to act as such, the Tribe shall designate a new agent in the State of California on the terms and for the purposes of this Section, and the Tribe shall, as soon as practicable, give notice to the Manager of such new agent. Nothing herein shall be deemed to limit the ability of any Party to serve any such legal process in any other manner permitted by applicable law.

16.7 Dispute Resolution; Arbitration. The Parties shall use their commercially reasonable efforts to settle any dispute, controversy or claim arising out of or relating to this Agreement or termination of this Agreement or any documents or instruments entered into in connection herewith. To this effect, the Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If they do not reach such solution within a period of thirty (30) days, then, upon notice by either Party to the other Party, all such disputes, controversies or claims between or among the Parties, shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association and the Federal Arbitration Act. The arbitrator(s) shall have no authority to award consequential, incidental or punitive damages, but shall have the authority to award actual damages, costs, and/or equitable relief. In determining any matter, the arbitrator(s) shall apply the terms of this Agreement without adding to, modifying or changing the terms in any respect, and shall apply the laws of the State of California. All arbitration hearings shall be held at a place designated by the arbitrator(s) in Sacramento, California. Arbitration shall be initiated by the Party making the claim by service of a demand notice for arbitration within one hundred eighty (180) days of when the dispute, controversy or claim arises. Arbitration fees and costs, including reasonable attorneys' fees, shall be paid by the non-prevailing party, as determined by the arbitrator; provided, however, that if the arbitrator determines there is no prevailing party, then the costs and fees shall be an Operating Expense of the Enterprise. Notwithstanding anything to the contrary in this Section 16.7, all arbitration fees and costs, including reasonable attorneys' fees, shall be an Operating Expense for the first three and one-half (3.5) years after the Effective Date of this Agreement.

17. Non-Impairment of Agreement. Neither the Tribe nor any Tribal Party shall directly or indirectly, take any action, enter into any agreement, amend its Constitution or enact or amend any ordinance, law, rule or regulation that would prejudice or have a material adverse effect on the rights of the Manager under this Agreement. Neither the Tribe nor any Tribal Party, or their representatives or any instrumentality, committee, agency, department, board or other official body of the Tribe shall, by exercise of executive action, police power, eminent domain or otherwise, act to modify, amend or in any manner impair the obligations of the Parties under this Agreement. Any such action or attempted action shall constitute a material breach by the Tribe of this Agreement. The Tribe acknowledges that the arbitrator specified in Section 16.7 of this Agreement and the courts specified in Section 16.3 of this Agreement have the authority to provide equitable relief to enforce the provisions of this Section.

18. Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, written or oral, between the Parties.

19. Government Savings Clause. Each Party shall execute, deliver and, if necessary, record any and all additional instruments, certifications, amendments, modifications and other documents as may be required by the United States Department of the Interior, BIA, the NIGC, the Office of the Field Solicitor, or any applicable statute, rule or regulation in order to effectuate, complete, perfect, continue or preserve the respective rights, obligations, liens and interests of the parties hereto to the fullest extent permitted by law; provided, that any such additional instrument, certification, amendment, modification or other document shall not materially change the respective rights, remedies or obligations of the Tribe or the Manager under this Agreement.

20. Execution. This Agreement is being executed in four counterparts, two to be retained by each Party. Each of the four counterparts is equally valid. This Agreement shall be binding upon both Parties when properly executed and approved by the Chairman of the NIGC.

[SIGNATURES ON FOLLOWING TWO PAGES]



**EXECUTION COPY**

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

WILTON RANCHERIA, CALIFORNIA, a  
federally recognized tribe

By:  10/16/18  
Name: Raymond C. Hitchcock  
Title: Chairperson  
Dated: 10/16/18

**[SIGNATURE PAGE TO MANAGEMENT AGREEMENT]**

**EXECUTION COPY**

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

BGM CO. INC., a Nevada corporation

By: Brian A. Larson

Name: Brian Larson

Title: EVP, Sec., & General Counsel

Dated: 10/18/18

**[SIGNATURE PAGE TO MANAGEMENT AGREEMENT]**

**Exhibit A****Property Legal Description**

Being a portion of Lot A as shown on that certain map entitled "Subdivision No. 00-038.00 Lent Ranch Marketplace" filed for record on December 14, 2007 in Book 372 of Maps, Page 27, located in the City of Elk Grove, County of Sacramento, State of California, more particularly described as follows:

**Commencing** at a point which is the northeasterly corner of Lot A of said map, being a 3/4" iron pipe with plug stamped L.S. 6815; Thence leaving said **Point of Commencement** along the northeasterly line of said Lot A, South 37°55'18" East, a distance of 533.10 feet; Thence leaving said northeasterly line, entering and passing through said Lot A, South 51°30'01" West, a distance of 24.29 feet to the true **Point of Beginning**. Thence leaving said Point of Beginning and continuing through said Lot A, South 51°30'01" West, a distance of 1780.56 feet to a point on the southwesterly line of said Lot A, also being a point on the northeasterly right-of-way line of Promenade Parkway as shown on said map;

Thence northwesterly and northerly, respectively, along said right-of-way line, the following Twenty-one (21) arcs, courses and distances:

- 1) from a radial line which bears South 57°17'37" West, along a non-tangent curve concave to the east, having a radius of 1,452.00 feet, northwesterly 564.43 feet along said curve through a central angle of 22°16'20";
- 2) North 79°33'57" East, a distance of 6.00 feet;
- 3) from a radial line which bears South 79°33'57" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 40.55 feet along said curve through a central angle of 92°56'41";
- 4) North 82°30'38" East, a distance of 51.72 feet;
- 5) North 07°29'22" West, a distance of 100.00 feet;
- 6) South 82°30'38" West, a distance of 53.51 feet;
- 7) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 40.62 feet along said curve through a central angle of 93°06'07";
- 8) South 85°36'45" West, a distance of 6.00 feet;
- 9) from a radial line which bears South 85°36'45" West, along a non-tangent curve concave to the east, having a radius of 1,454.00 feet, northerly 93.58 feet along said curve through a central angle of 03°41'16";
- 10) North 00°42'00" West, a distance of 147.80 feet;
- 11) North 89°18'00" East, a distance of 6.00 feet;
- 12) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the southeast, having a radius of 25.00 feet, northeasterly 39.27 feet along said curve through a central angle of 90°00'00";
- 13) North 89°18'00" East, a distance of 6.00 feet;
- 14) North 00°42'00" West, a distance of 50.00 feet;
- 15) South 89°18'00" West, a distance of 13.34 feet;

EXECUTION COPY

- 16) along a tangent curve concave to the northeast, having a radius of 25.00 feet, northwesterly 38.46 feet along said curve through a central angle of 88°08'33";
- 17) South 87°26'33" West, a distance of 6.00 feet;
- 18) North 02°33'27" West, a distance of 51.58 feet;
- 19) North 00°42'00" West, a distance of 563.84 feet;
- 20) North 89°18'00" East, a distance of 6.00 feet;
- 21) from a radial line which bears South 89°18'00" West, along a non-tangent curve concave to the east, having a radius of 25.00 feet, northerly 6.76 feet along said curve through a central angle of 15°30'00" to the northwest corner of said Lot A and a point on the common line between said Lot A and Lot G of said Map;

Thence leaving said northeasterly line, along said common line, the following four (4) arcs, courses and distances:

- 1) North 89°12'25" East, a distance of 86.70 feet;
- 2) along a tangent curve concave to the southwest, having a radius of 330.00 feet, southeasterly 314.08 feet along said curve through a central angle of 54°31'51";
- 3) South 36°15'44" East, a distance of 86.17 feet;
- 4) along a tangent curve concave to the north, having a radius of 25.00 feet, easterly 37.96 feet along said curve through a central angle of 87°00'21";

Thence leaving said common line, entering and passing through said Lot A, the following eight (8) arcs, courses and distances:

- 1) South 32°02'06" East, a distance of 66.91 feet;
- 2) from a radial line which bears North 33°08'11" West, along a non-tangent curve concave to the south, having a radius of 978.00 feet, easterly 417.51 feet along said curve through a central angle of 24°27'35";
- 3) North 81°19'25" East, a distance of 19.83 feet;
- 4) along a tangent curve concave to the south, having a radius of 879.00 feet, easterly 342.73 feet along said curve through a central angle of 22°20'25";
- 5) South 76°20'11" East, a distance of 12.19 feet;
- 6) along a tangent curve concave to the southwest, having a radius of 342.00 feet, southeasterly 157.69 feet along said curve through a central angle of 26°25'03";
- 7) along a compound curve concave to the southwest, having a radius of 342.00 feet, southeasterly 71.04 feet along said curve through a central angle of 11°54'08";
- 8) South 38°01'00" East, a distance of 346.19 feet to the **POINT OF BEGINNING**.

Containing 35.92 acres, more or less.

The Basis of Bearings for this description is the California State Plane Coordinate System, Zone 2, NAD 83, Epoch Date 1997.30 as measured between NGS Station "Eschinger", 1<sup>st</sup> Order and NGS Station "Keller", 1<sup>st</sup> Order. Said Bearing is North 20°56'36" West. Distances shown are ground based.

May 23, 2016

END OF DESCRIPTION

PREPARED BY WOOD RODGERS, INC.  
SACRAMENTO, CALIFORNIA

**Exhibit B**

**Litigation List**

*Stand Up For California!, et al. v. United States Department of Interior, et al.*, filed January 11, 2017, U.S. District Court for the District of Columbia, Case No. 1:17-CV-00058.