

Exhibit VI.O (Casino Manager):

If a Manager that is different from the Applicant will manage the Gaming Facility, submit as Exhibit VI.O. a description of the relationship between the Manager and the Applicant including, without limitation, a summary of the terms of any and all agreements, contracts or understandings between the Manager and the Applicant. Attach copies of any such written agreements, contracts or understandings.

Hudson Valley Gaming, LLC, an affiliate of Rush Street Gaming, LLC and a direct 50% member of Hudson Valley Casino and Resort, LLC, will be the Manager. Rush Street Gaming, LLC will provide oversight services.

[EXECUTION COPY]

MANAGEMENT SERVICES AGREEMENT

by and among

HUDSON VALLEY CASINO AND RESORT, LLC,

and

HUDSON VALLEY GAMING, LLC

dated as of June 30, 2014

CONFIDENTIAL

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CONFIDENTIAL

MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT (as amended, modified or supplemented in accordance with its terms, this “Agreement”) is made as of June 30, 2014, by and among **HUDSON VALLEY CASINO AND RESORT, LLC**, a Delaware limited liability company (“HVC”); and Hudson Valley Gaming, LLC, a Delaware limited liability company having its principal office and place of business located at 900 N. Michigan Avenue, Suite 1600, Chicago, Illinois 60611 (the “Manager”).

RECITALS

A. HVC is pursuing a license from the New York State Gaming Commission (as defined below) under the Gaming Act (as defined below) to own and operate the Casino (as defined below).

B. HVC is a party to that certain Limited Liability Company Agreement of HVC initially dated as of the date hereof (as amended, modified or supplemented in accordance with its terms, the “LLC Agreement”).

C. If HVC is awarded a license from the New York State Gaming Commission under the Gaming Act to own and operate the Casino, HVC desires to engage the services of a manager with a team experienced in the casino, gaming, food service, retail sales and related hospitality businesses in order to ensure that such business activities will be run in a professional manner, and in accordance with applicable law, rules and regulations.

D. The Manager and its Affiliates (as defined below) have extensive experience and expertise in the management of gaming operations, food service facilities, retail stores and related hospitality businesses.

E. HVC has selected the Manager to provide HVC with management and consulting services in connection with the gaming, food service, retail sales and related hospitality businesses to be conducted by HVC at the Casino upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in view of the Recitals and in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

ARTICLE I DEFINITIONS

1.01 Definitions. The following capitalized terms and phrases used in this Agreement shall, unless the context otherwise requires, have the meanings specified in this **Article I**:

1.01.1 Affiliate. “Affiliate” of a Person means (i) any corporation, partnership, limited liability company, managed fund, trust or other Person Controlling,

Controlled by or under common Control with the Person in question (whether directly or indirectly through one or more intermediaries). “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, trust agreement or otherwise. Notwithstanding the foregoing, the Manager shall not be deemed to be an Affiliate of HVC, and vice-versa.

1.01.2 Agreement. The term “Agreement” has the meaning set forth in the preamble.

1.01.3 Audited Statements. The term “Audited Statements” has the meaning set forth in **Section 6.03**.

1.01.4 Bank Accounts. The term “Bank Accounts” has the meaning set forth in **Section 6.01**.

1.01.5 Capital Renewals. The phrase “Capital Renewals” refers to the items of replaced Equipment, major repairs and remodeling to the Casino and other capital investment projects, all as reflected in the Capital Renewals Budget.

1.01.6 Capital Renewals Budget. The term “Capital Renewals Budget” has the meaning set forth in **Section 4.04.1**.

1.01.7 “Carve-Out Activity” shall mean any of the following:

- (a) (i) the pursuit, development, ownership and operation by Affiliates of the Manager of a gaming facility in Schenectady, New York, located in Zone 2, Region 2 under the Gaming Act and (ii) pursuit, development, ownership and operation by Newburgh Casino Associates, LLC or its Affiliates of a gaming facility in East Greenbush, New York, located in Zone 2, Region 2 under the Gaming Act
- (b) passive, non-controlling interest in any publicly-traded securities of a Person;
- (c) investment in, or acquisition of, debt securities or other debt instruments of any Person;
- (d) internet gaming, including the placement of wagers through the internet (and any related customer wagering support);
- (e) the ownership of or investment by a party hereto or any Affiliate of a any such party in a Person, including a real estate investment trust (“REIT”), which owns real estate on which any gaming facility is or may be constructed or the purchase of any such real estate directly or indirectly by such a REIT;

- (f) the purchase and subsequent ownership of a non-controlling percentage of stock of any class listed on a national securities exchange or traded in the over-the-counter market of less than five percent (5%);
- (g) the purchase and subsequent ownership by a Person subject to the restrictions in Section 12.01 hereof of an interest in a Person, so long as (i) the revenues (or reasonably anticipated revenues) directly from one or more casinos or other gaming facilities in the Hudson Valley-Catskill Region, is in the aggregate, less than 20% of the aggregate revenues (including revenue or reasonably anticipated revenue in the Hudson Valley-Catskill Region) of such Person and (ii) Newburgh Casino Associates, LLC is offered the right to participate in such purchase and subsequent ownership in such Person in accordance with, and in such amounts and on such terms, as are contemplated by clause (g) of the definition of “Carve-Out Activity” set forth in the LLC Agreement; or
- (h) the receipt and subsequent ownership of an interest in a Person as consideration in exchange for the sale of assets or equity interest in one or more gaming facilities.

1.01.8 Casino. Any reference herein to “Casino” means a gaming facility and related facilities (including any hotel or lodging, restaurant, entertainment, retail and other facilities and amenities and all furniture, furnishings, machinery, equipment, and other tangible personal property located therein and used in connection therewith) on the real property to be owned by HVC.

1.01.9 Casino Opening Date. The “Casino Opening Date” means the date on which the Casino is substantially completed and open to the general public for gaming business.

1.01.10 Commencement Date. The “Commencement Date” is the date of execution of this Agreement.

1.01.11 Construction Costs. The “Construction Costs” refers to all hard and soft costs, expenses and fees for designing, developing, constructing, equipping and preparing the Casino for the Casino Opening Date, including all direct costs and contingencies related thereto such as labor, materials, supplies, furniture, furnishings, fixtures, machinery, equipment, construction management, architectural, engineering and design fees, site work (including survey fees, environmental examinations etc.), utility installation and hook-up fees, construction permits, certificates and bonds, preopening and marketing expenses (including labor), gaming tax deposits, insurance, permit fees, lobbying, working capital to commence operations of the Casino on the Casino Opening Date (including initial cage cash) and interest, fees and other costs with respect to financing, obtaining and funding any letters of credit, as well as the costs, expenses and fees of acquiring real property (including exercising any option thereon under any option agreement) and professional services and fees related to the foregoing.

1.01.12 Default or Event of Default. A “Default” or an “Event of Default” is any occurrence that, with the giving of notice, the passage of time, or both, gives rise to the right by either party to terminate its obligations of further performance under this Agreement in the manner described in **Section 11.03** or **Section 11.04** of this Agreement.

1.01.13 Design Documents. The “Design Documents” are the plans, layouts, specifications, drawings and designs for the Casino to be constructed and furnished by HVC, including development design plans and specifications and final construction documents, together with any substantial changes therein or departures therefrom.

1.01.14 Development Costs. The “Development Costs” are any of the following: all costs, expenses and fees of (x) preparing and submitting the application to the New York State Gaming Commission and obtaining the License and (y) the Construction Costs; provided, however, that none of the following shall constitute Development Costs: (i) internal overhead or personnel costs of a holder of equity interests in HVC or its Affiliates, (ii) costs and expenses incurred by a holder of equity interests in HVC or its Affiliates in connection with the regulatory and suitability determination process, including the \$1,000,000 application fee paid by each such holder of equity or its Affiliates to the New York State Gaming Commission, (iii) legal, accounting and due diligence costs and expenses incurred by each holder of equity interests in HVC or its Affiliates in connection with preparing, documenting and negotiating the letter of intent between the holders of equity interests in HVC, this Agreement and the LLC Agreement and (iv) legal and accounting costs of a holder of equity interest in HVC or its Affiliates in operating the Casino.

1.01.15 Equipment. The “Equipment” refers to all furniture, furnishings, fixtures, wall-mounted art, and other machines and equipment situate in the Casino or used in connection with the operation of the Casino, including but not limited to: (i) all equipment relating to the operation of the Casino; (ii) all computer and communications equipment and software required for the operation of the Casino; (iii) fixtures, systems, apparatus and other personal property used in, or held in storage for use in connection with the operation of, the Casino; (iv) money counting equipment, safes, automatic teller machines, ticket redemption and marketing kiosks and cash dispensing machines; (v) all equipment used for storing inventories of food and beverage products and for preparing, cooking, serving, receiving, holding, selling, and vending food and beverage items; (vi) ware washing equipment; (vii) all display cabinets, counters, wrap stands and shelving for retail merchandise outlets; (viii) all inventory control, register and point of sale equipment; (ix) all security and surveillance equipment; (x) personal computers and computer servers; (xi) telephones and telecommunications equipment; (xii) lifts, loaders and transports; (xiii) bar and beverage equipment, refrigeration equipment, coolers and walk-ins; (xiv) all smallwares, utensils, crockery, glassware, dishware and cutlery; (xv) all furniture, furnishings and decorations, office furniture and equipment and all other fixed assets located in the Casino, from time to time, such as signage, graphics and menu boards and (xvi) all bedding, soft and hard goods, linens and other goods.

1.01.16 Expenses. Any reference to “Expenses” means the following costs and expenses incurred after the Commencement Date in connection with the management and operation of the Casino, or associated with the maintenance of the Casino:

- (a) The total payroll costs of the employees of HVC who work in the Casino, and the total payroll costs of the Manager’s on-site general manager who supervises the Casino, such total payroll costs to include (i) salaries and wages paid; (ii) social security, unemployment and other taxes paid; (iii) reasonable employee fringe benefits; and (iv) reasonable bonus payments to the Manager’s on-site general manager and to other select employees of the Casino, to the extent such bonuses are approved by HVC and the Manager in the annual Operating Budgets;
- (b) General and administrative expenses of the Casino, general facility cleaning, laundry and trash removal expenses, employee hiring and training expenses, the cost of marketing and promoting the Casino, costs associated with the operation and maintenance of automatic teller machines, ticket redemption and marketing kiosks and cash dispensing machines throughout the Casino, routine repairs, maintenance and minor alterations not included in Capital Renewals, and the cost of all utility services (including heat, telephone, air conditioning, light, power, water and sewage treatment and disposal) received at the Casino and the services of cleaning and removing snow from parking lots, driveways and walkways from the Common Areas;
- (c) The cost of food and beverage items, gaming supplies, food service, bedding, linens, supplies, cleaning supplies, stationery, uniforms, fuel and other consumable items used or sold in connection with the Casino;
- (d) To the extent not included in Capital Renewals, the cost of acquiring or leasing the Equipment, and the cost of replacing the Equipment when warranted by damage or otherwise or rendered obsolete;
- (e) The amount of any accounts receivable with respect to the Casino that are deemed uncollectible, or in the alternative, a reasonable reserve for doubtful accounts receivable established by mutual agreement of HVC and the Manager in the preparation of the annual Operating Budgets;
- (f) The fees and expenses of independent accountants, independent legal counsel, and other independent professional advisors, including but not limited to government relations and public relations consultants;
- (g) The fees and expenses of independent technical, operational and other consultants, experts, and advisors for specified services in connection with non-routine work required by the Casino to the extent included in the Operating Budget or otherwise approved by HVC;

- (h) The handling and service charges imposed by third parties in connection with the purchase of goods;
- (i) The amount of out-of-pocket costs and other disbursements incurred by the Manager which are reimbursed by HVC pursuant to Article VII of this Agreement;
- (j) The costs and expenses of operating computer systems and communication lines used by the Casino;
- (k) Insurance premium expenses and deductibles associated with the insurance coverages described in **Section 8.02** of this Agreement;
- (l) Any taxes, duties, levies, assessments, fees or other charges of any nature that are imposed on, or assessed against, the business of the Casino, or the Equipment, or are otherwise related to any of the agreements between HVC and the Manager or to the management, operation or promotion of the Casino;
- (m) The costs and expenses of obtaining and maintaining operating licenses, permits, authorizations and approvals;
- (n) Such other costs and expenses as are specifically provided for elsewhere in this Agreement or in any approved annual Operating Budget, or are otherwise approved by HVC as being reasonably necessary for the management and operation of the Casino, or the maintenance of the Casino;
- (o) A proportionate share, as set forth in each annual Operating Budget, of the salaries and other compensation expense of personnel employed by HVC or its Affiliates whose duties include both the business of the Casino, on the one hand, and any other businesses, on the other, such as (without limitation) the accounting staff and security personnel who are not specifically assigned to the Casino; and
- (p) Such other costs and expenses as are customary for the operation of a casino and related amenities similar to the Casino.

Development Costs, Capital Renewals and any depreciation or amortization of capital items incurred by the Casino shall not be included within the definition of “Expenses” for purposes of this Agreement.

1.01.17 Extraordinary Event. An “Extraordinary Event” is any condition of force majeure that prevents or delays the performance (in whole or in part) by a party of its obligations (other than obligations for the payment of a sum of money) set forth in this Agreement, for reasons beyond the reasonable control of such party. Any of the following events, regardless of where it occurs or its duration, is an “Extraordinary

Event”: (i) acts of nature without the interference of any human agency (including hurricanes, typhoons, tornados, cyclones, other severe storms, winds, lightning, floods, earthquakes, volcanic eruptions, fires, explosions, disease, or epidemics); (ii) fires and explosions caused wholly or in part by human agency; (iii) acts of war, attack, invasion, or other acts of hostility by foreign enemies; (iv) civil war, rebellion, revolution, insurrection or usurpation of sovereign power; (v) riots or other civil commotion; (vi) terrorism (including hijacking, sabotage, bombing, murder, assault and kidnapping); (vii) strikes or similar labor disturbances; (viii) lack of availability of critical materials or supplies; (ix) action or inaction of governmental authorities having jurisdiction over the Casino; and (x) any other events beyond the reasonable control of HVC or the Manager.

1.01.18 Gaming Act. The term “Gaming Act” shall mean the Upstate New York Gaming and Economic Development Act of 2013 and any rules and regulations (including temporary regulations then applicable) adopted thereunder (as the same may be modified, amended, replaced or superseded from time to time).

1.01.19 Gaming Authority. The term “Gaming Authority” means the New York State Gaming Commission and those other federal, state, local and foreign governmental, regulatory and administrative authorities, agencies, boards and officials responsible for or involved in the regulation of gaming or gaming activities in any jurisdiction.

1.01.20 Gaming Laws. The term “Gaming Laws” means those laws and the rules and regulations promulgated by any Gaming Authority under such laws pursuant to which any Gaming Authority possesses regulatory or licensing authority over gaming within any jurisdiction, including the Gaming Act.

1.01.21 Gross Revenues. The phrase “Gross Revenues” refers to the gross amount of all revenues and receipts of every kind (whether from cash or credit transactions), determined on an accrual basis, received by HVC from goods sold, services performed or other commercial activities conducted at the Casino, together with any proceeds from business interruption insurance or other “loss of income” insurance. However, Gross Revenues shall not include: (i) tips, service charges, or gratuities received by employees of the Casino; (ii) proceeds from the sale of the Casino, any portion thereof, or the Equipment; (iii) proceeds under property loss, casualty or general liability insurance policies (other than the business interruption insurance to the extent such proceeds relate to the business of the Casino); (iv) the gross receipts realized by tenants, subtenants and licensees; (v) excise, sales, or use taxes or similar charges collected directly from patrons or included as part of the sales price of any goods or services; or (vi) proceeds from complementary wagers.

1.01.22 HVC. Any reference to “HVC” means Hudson Valley Casino and Resort, LLC, a Delaware limited liability company, and its successors and assigns.

1.01.23 Hudson Valley-Catskill Region. The term “Hudson Valley Catskill Region” means Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster counties in the State of New York.

1.01.24 Legal Requirements. The “Legal Requirements” are all public laws, statutes, ordinances, judgments, orders, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments and governmental authorities, which now or hereafter may be applicable to the business of the Casino and the operation thereof, including those legal requirements relating to zoning, building, public safety, environment and health, or employee benefits.

1.01.25 License. The term “License” means a casino license from the New York State Gaming Commission to be issued pursuant to the Gaming Act in respect of the Hudson Valley-Catskill Region.

1.01.26 License Award Date. The term “License Award Date” means the date (if any) that the License is awarded to HVC or any of its subsidiaries

1.01.27 Management Fee. Reference to the “Management Fee” means the Management Fee as calculated in accordance with **Exhibit A**.

1.01.28 Manager. The “Manager” is Hudson Valley Gaming, LLC, a Delaware limited liability company, and its successors and assigns.

1.01.29 New York State Gaming Commission. The “New York State Gaming Commission” refers to the New York State Gaming Commission established pursuant to the Gaming Act (or such other board established for such purpose pursuant to the Gaming Act and which has general jurisdiction over all gaming activities or related activities described in the Gaming Act).

1.01.30 Operating Budget. The term “Operating Budget” has the meaning set forth in **Section 4.04.1**.

1.01.31 Operating Year. An “Operating Year” generally refers to each fiscal year of operation of the Casino. The first Operating Year will begin on the Casino Opening Date and will continue through December 31st of the year in which the Casino Opening Date occurs. Thereafter, each Operating Year will commence on January 1st of each year and will continue through December 31st of the year.

1.01.32 Project Range. The term “Project Range” has the meaning set forth in **Section 12.01**.

1.01.33 Restricted Employees. The term “Restricted Employees” means any employee of HVC who has a title that is at or above the Vice President level.

1.01.34 References and Interpretations. References to this Agreement shall include the exhibits attached hereto and all amendments or renewals thereof. Unless

expressly stated to the contrary, reference in this Agreement to any article or section includes all subsections thereof. Any exhibit referenced in this Agreement shall be construed to be incorporated in this Agreement by such reference. All references to dollars mean the lawful currency of the United States of America. Any reference to statutes or laws will include all amendments, modifications, or replacements of the specific sections and provisions concerned. As used in this Agreement, the masculine, feminine or neuter gender shall be deemed to include the others whenever the context so indicates or requires. Terms defined in the singular have a comparable meaning when used in the plural and vice versa. Terms defined in the current tense shall have a comparable meaning when used in the past or future tense and vice versa. Terms defined as a noun shall have a comparable meaning when used as an adjective, adverb, or verb and vice versa. Whenever the term “include” or “including” is used in this Agreement, it shall mean “including, without limitation,” (whether or not such language is specifically set forth) and shall not be deemed to limit the range of possibilities to those items specifically enumerated. Unless otherwise limited, the words “hereof”, “herein” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision.

ARTICLE II EXCLUSIVE MANAGEMENT RIGHTS

2.01 Exclusivity. During the term of this Agreement, the Manager will have the exclusive right to provide management services in connection with the operation of the Casino. HVC agrees to provide the employees and agents of the Manager and its Affiliates with reasonable access to the Casino during the term of this Agreement so that the Manager can perform its duties described herein. HVC will not engage in operation of any Casino in the Hudson Valley-Catskill Region, except in accordance with the terms of this Agreement, and HVC will not lease, license or permit the use of any part of the Casino to anyone other than the Manager for the operation of the Casino except as approved by the Manager.

ARTICLE III DEVELOPMENT AND PRE-OPENING ACTIVITIES

3.01 Development of the Casino. Subject to obtaining the approval of the New York State Gaming Commission and any other governmental agency having jurisdiction over the Casino, HVC may decide to undertake the construction of a Casino. HVC will be responsible for the payment of all Development Costs related to the design, development, and construction of any such Casino. All elements of the buildings and other structures, all Equipment, and all wiring, terminals, and other improvements made or installed in connection with the construction and furnishing of the Casino as well as all designs, drawings, strategies, customer lists, marketing plans or any other information or materials relating to the Casino shall be the sole property of HVC.

3.02 Development Support to be Provided by the Manager. From and after the License Award Date, the Manager will provide the following assistance and support to HVC in connection with any design, development and construction of the Casino that HVC may decide to undertake:

3.02.1 Authority of HVC. As indicated in **Section 3.02.3** below, the Manager will provide certain technical assistance and support during the design and construction of the Casino, but HVC will have exclusive authority, control and responsibility for all phases of such development and construction work. Without limiting the generality of the foregoing, HVC will choose the architects, design firms, and general contractor or construction manager to perform the work associated with the development and construction of the Casino. The Design Documents will be submitted by HVC to the Manager for review and comment, but the final decision as to the scope and content of the Design Documents will remain with HVC.

3.02.2 Responsibility of the Manager. The Manager will pay specific attention to those portions of the Design Documents which, in the reasonable opinion of the Manager, would materially affect its ability to manage the Casino, such as (i) the layout of the gaming floor area, (ii) the layout, design and equipping of the kitchens and food service areas, (iii) the mechanical and electrical systems, the public circulation system (including elevators and escalators), public safety systems, all security systems (including surveillance and security communication systems), the telephone system, the computer hardware and other computer systems, and the signage for the Casino (including outdoor signs), (iv) the layout, design, furnishings and equipment of any hotels and related amenities and (v) the layout and design of the parking facilities.

3.02.3 Technical Assistance and Support. In addition to the general assistance and support described in **Section 3.02.2** above, during any development and construction of the Casino, the Manager agrees to:

- (a) Review and comment on the schedule for the design, construction and completion of the Casino and the associated schedule for site inspections;
- (b) Attend design meetings with such frequency as is reasonably necessary to advance the development and completion of the Casino;
- (c) Provide operational and technical assistance to HVC in the development of design and operating criteria for the Casino;
- (d) Recommend food and beverage concepts and provide layout planning assistance for the administrative office and back of house areas for incorporation in the Design Documents by the independent design consultants;
- (e) Review reports and studies provided by the consultants to HVC engaged in the design of the Casino;

- (f) Review and make recommendations as to the types, locations and extent of security systems recommended by the consultants to HVC;
- (g) Review and make recommendations as to the locations and types of telephone and other communications equipment recommended by the consultants to HVC;
- (h) Assist in the preparation of specifications, equipment schedules, diagrams, drawings and other data required to solicit proposals from qualified vendors and/or contractors to furnish and install the Equipment;
- (i) Review and comment on the Design Documents at phases of design to be agreed on in accordance with the overall development schedule;
- (j) Assist HVC in monitoring and updating the development and construction schedule during the execution of the work;
- (k) Conduct a series of general (but not exhaustive) site observations during the construction of the Casino in accordance with the agreed upon on-site visit schedule;
- (l) Conduct a site observation trip prior to turnover by the general contractor or construction manager to assist HVC in verifying compliance of the completed work with the Design Documents; and
- (m) Assist HVC in purchasing functions related to the Casino, including to the extent commercially reasonable and available to the Manager, to take advantage of national purchasing programs.

**ARTICLE IV
RESPONSIBILITIES OF THE MANAGER
AFTER THE LICENSE AWARD DATE**

4.01 Duties of the Manager. HVC hereby grants to the Manager the sole and exclusive right (including as to HVC) to manage the day-to-day operations of the Casino on behalf of HVC during the term of this Agreement. Except as otherwise specified in this Agreement, HVC grants to the Manager the full scope of authority necessary to perform its obligations under this Agreement. In connection therewith, the Manager shall have the authority and responsibility, subject to the provisions of this Agreement and the rules and regulations of the New York State Gaming Commission and after consultation with HVC, to (i) determine the operating policy, standards of operation, quality of service, maintenance and physical appearance of the Casino, and any other matters affecting the operation and management of the Casino; (ii) supervise and direct all phases of advertising, marketing and promotion for the Casino, provided that the Manager's directives shall be consistent with the advertising and marketing expenditures set forth in the current annual Operating Budget, and further provided that HVC retains the right to

select and employ any third party advertising and/or marketing firms; (iii) subject to **Section 4.04.4** and **Section 4.04.6**, carry out all programs contemplated by the Operating Budget and Capital Renewals Budgets hereafter described in **Section 4.04** and (iv) perform the duties set forth in **Section 4.02**. The performance of all activities by the Manager pursuant to this Agreement shall be on behalf of HVC and for its exclusive account and benefit. HVC agrees to cooperate reasonably with the Manager so that the Manager is able to carry out its duties hereunder, including without limitation, any assistance from HVC that the Manager might need in connection with the obtaining of all licenses, permits and approvals required for the operation of the Casino. The Manager agrees to cooperate reasonably with HVC so that the directives of the Manager in exercising the authority described above are consistent with the current annual Operating Budget, and are also consistent with practices in gaming facilities reasonably comparable to the Casino.

4.02 Specific Responsibilities of the Manager. From and after the License Award Date, in addition to the duties set forth in **Section 3.02.2**, the Manager will use its commercially reasonable efforts to perform its management and supervisory duties with respect to the Casino, including, in furtherance of the preceding, the following specific duties:

- (a) To supervise the employees of HVC engaged in the collection and deposit of all Gross Revenues received from operation of the Casino, with cash deposits to be made to such Bank Accounts as are designated by HVC;
- (b) To oversee the employees of HVC, or third party vendors and service providers, in connection with the general administration, management and operation of the Casino, including without limitation, providing for (i) water, heat, light and other utility services; (ii) recurring services such as trash removal, pest extermination, decorating, gardening, laundry, telephone service, snow removal and any other customary and commercially reasonable contracts or services; (iii) purchases contemplated by this Agreement using commercially reasonable efforts to obtain provisions in such contracts and purchases which are beneficial to the operation of the Casino (it being understood that the Manager will, if commercially practicable, provide HVC with the benefit of discounts available to the Manager under national purchasing contracts where commercially reasonable); (iv) marketing and promotional programs or services; (v) personnel services; (vi) accounting, bookkeeping and cash management services, and (vii) security services;
- (c) To advise and assist HVC in the negotiation or termination of contracts and the recovery of possession of property;
- (d) To supervise the employees of HVC in maintaining the Casino in a good state of repair and condition, and to use commercially reasonable efforts to ensure that ordinary repairs, alterations and improvements to the Casino are made, including advising HVC of the necessity and estimated cost of such maintenance and repairs;

- (e) To recommend and oversee the replacement or substitution of the Equipment and other furnishings located in the Casino as the same are damaged, destroyed or become obsolete, or as is otherwise necessary to the successful operation of the Casino.
- (f) To assist HVC in obtaining and maintaining all licenses, permits, authorizations and approvals required for the conduct of the Casino;
- (g) To supervise the employees of HVC in remitting to the New York State Gaming Commission all amounts realized from operations of the Casino, to the extent required by law;
- (h) To promptly notify HVC of any significant personal injury, property damage or other claim occurring on, or claimed by any party with respect to, the Casino that is outside of the ordinary course of business, and to promptly forward to HVC any summons, subpoena or other legal document served upon the Manager with respect to such matters;
- (i) To assist HVC in making all reasonable efforts to prevent violations of, and otherwise comply with, the provisions of any Legal Requirements applicable to the use and occupancy of the Casino, or the conduct of the Casino;
- (j) To supervise the employees of HVC in their performance of all financial reporting functions with respect to the Casino and in their maintaining of the licenses, permits, authorizations, approvals and insurance coverages required for such businesses or as contemplated by this Agreement; and
- (k) To assist HVC in making arrangements for appropriate security for the operation of the Casino.

4.03 No Liability for Certain Violations. The Manager assumes no liability whatsoever for any acts or omissions of HVC.

4.04 Operating Budgets and Capital Renewals Budgets. The Manager will prepare an Operating Budget and a Capital Renewals Budget covering the prospective operations of the Casino for each Operating Year, for review and approval by HVC in accordance with the provisions of this **Section 4.04**.

4.04.1 Preparation of the Budgets. The Manager will submit to HVC, not less than thirty (30) days in advance of the first Operating Year and by November 15th prior to each subsequent Operating Year, the following forecasts and budgets for such Operating Year:

- (a) A forecast composed of an estimate of profit and loss by month, an estimated cash flow projection by month, and a forecast of the operations of the Casino by department (collectively the "Operating Budget"); and

- (b) A budget covering estimated Capital Renewals which indicates in reasonable detail the replacements of, or additions to, the Equipment, major repairs and remodeling to the Casino, and the nature of other special projects recommended by the Manager (the “Capital Renewals Budget”).

4.04.2 Review of the Budgets. In connection with its annual submission of the Operating Budget and the Capital Renewals Budget, representatives of the Manager will meet with representatives of HVC to have an in-depth discussion thereof, including a comparison of such budgets with the previous year’s performance of the Casino, a discussion of marketing strategies, identification of potential markets, and the proposed expenditures contained in the Capital Renewals Budget.

4.04.3 Approval of the Budgets. The Operating Budget and the Capital Renewals Budget shall be subject to the approval of HVC, it being contemplated that each such Operating Budget and Capital Renewals Budget shall be agreed upon by the parties within thirty (30) days after the submission of the same by the Manager to HVC. If HVC shall fail to approve any Operating Budget or Capital Renewals Budget within thirty (30) days after its receipt from the Manager, and if HVC fails to submit written objections to the Operating Budget and the Capital Renewals Budget to the Manager within such thirty (30) day period of time, then HVC shall be deemed to have approved the same. In case of a dispute with regard to any Operating Budget or Capital Renewals Budget, then pending the resolution of such dispute, the Manager shall be entitled to continue to manage the Casino in accordance with the standards set forth herein and shall be entitled to make expenditures which are contemplated by and consistent with the applicable budget proposed by the Manager for such Operating Year; provided, however, that, the maximum approved amount of such expenditures shall be equal to (a) the aggregate of all items set forth in the Operating Budget or the Capital Renewals Budget, respectively, which are not disputed by HVC, plus (b) (i) with respect to all items in the Operating Budget, which are disputed or objected to by HVC, the amount allocated to such item(s) in the applicable budget for the immediately preceding Operating Year increased by the greater of (x) five percent (5%) or (y) an amount reflecting the-current year-over-year change to the consumer price index promulgated by the U.S. Bureau of Labor Statistics and (ii) with respect to all items in the Capital Renewals Budget, which are disputed or objected to by HVC, the amount allocated to such item(s) in the applicable budget for the immediately preceding Operating Year increased by the greater of (x) fifteen percent (15%) if the immediately preceding Operating Year was the first Operating Year, ten percent (10%) if the immediately preceding Operating Year was the second Operating Year and five percent (5%) if the immediately preceding Operating Year was the third Operating Year or (y) an amount reflecting the-current year-over-year change to the consumer price index promulgated by the U.S. Bureau of Labor Statistics. HVC shall act reasonably and exercise prudent business judgment in approving or disapproving each portion of the Operating Budget and the Capital Renewals Budget, and will act in a manner that shall permit the continued functioning and operation of the Casino.

4.04.4 Performance under the Operating Budget. The Manager will use commercially reasonable efforts to achieve the results set forth in the Operating Budget with respect to any Operating Year and to operate the Casino within the approved Operating Budget (subject, in the case of any disputed items, to the provisions of **Section 4.04.3**); provided, however, that HVC acknowledges each Operating Budget is a composition of estimates and, therefore, the Manager cannot guarantee or warrant that the actual operation of the Casino for any Operating Year will be as set forth in the Operating Budget for such Operating Year, and the failure of the financial performance of the Casino to meet the expectations or income projections of HVC or the Manager shall not automatically be deemed a breach of Manager's duties hereunder. In addition, HVC understands and agrees as follows:

- (a) Certain expenses provided for in the Operating Budget for any Operating Year will vary based on the number of patrons served by the Casino, and accordingly, to the extent that patronage of the Casino for any Operating Year exceeds the patronage projected in the approved Operating Budget for such Operating Year, such approved Operating Budget shall be deemed to include corresponding increases in such variable expenses.
- (b) Certain amounts such as real estate taxes, utilities, insurance premiums, license and permit fees, and charges assessed by professional advisers or provided for in contracts and leases entered into by HVC pursuant to this Agreement are not within the ability of the Manager to control. All of such uncontrollable Expenses shall be paid by HVC without regard to the estimated amounts provided with respect thereto in the approved Operating Budget for any Operating Year.
- (c) If any expenditures are required on an emergency basis to avoid damage to the Casino or injury to persons or property, the Manager may direct the payment of such amounts as may reasonably be required to avoid or mitigate such damage or injury, even if the amounts of such expenditures are not specified in, or are not within the amounts provided for in, the approved Operating Budget for the Operating Year in question. The Manager will notify HVC as promptly as reasonably possible of the making any such expenditures.
- (d) If any expenditures are required to comply with any Legal Requirements or to cure or prevent any violation thereof, the Manager may direct the payment of such amounts as may be necessary to comply with such Legal Requirements or to remove or prevent the violation thereof even if the amounts of such expenditures are not specified in, or are not within the amounts provided for in, the approved Operating Budget for the Operating Year in question.
- (e) The Manager shall have the right from time to time during each Operating Year to propose modifications to the approved Operating Budget and the

Capital Renewals Budget then in effect based on actual operations during the elapsed portion of the Operating Year in question. Any such modification will be based on the judgment of the Manager as to what will transpire during the remainder of such Operating Year, and such modifications shall be considered in good faith by HVC. If HVC shall fail to approve any modification within thirty (30) days after its receipt from the Manager, and if HVC fails to submit written objections to such modification to the Manager within such thirty (30) day period of time, then HVC shall be deemed to have approved the same.

4.04.5 [RESERVED]

4.04.6 Compliance with the Capital Renewals Budget. The Manager will use its commercially reasonable efforts to at all times comply with the applicable Capital Renewals Budget for the current Operating Year and will use its commercially reasonable efforts to not deviate in any substantial respect therefrom; provided, however, that the Manager shall be entitled to reallocate the amount budgeted with respect to any item in such Capital Renewals Budget to another item budgeted therein, so long as the total amount of expenditures authorized in the Capital Renewals Budget is not exceeded. Notwithstanding the foregoing, the Manager shall be entitled to make additional expenditures not authorized under the then applicable Capital Renewals Budget in case of emergencies arising out of fire or any other casualty or in order to comply with any applicable Legal Requirements. If the Manager at any time determines that expenditures are required to be made on an emergency basis pursuant to **Subsection 4.04.4(c)**, the Manager may make such expenditures on HVC's behalf. Subject to the availability of sufficient amounts otherwise provided by HVC, the Manager shall arrange for the completion of all Capital Renewals approved by HVC in the Capital Renewals Budget for the Operating Year to which it applies. The lack of sufficient monies shall not limit the obligation of HVC to make Capital Renewals required to maintain the Casino in an attractive condition or to provide funds sufficient to enable the Manager to complete and pay for all Capital Renewals provided for in an approved Capital Renewals Budget.

4.05 Defective Conditions. If the design or construction of the Casino is defective, and the defective condition causes material damage or disruption to the Casino, poses a risk of injury to people or property, materially interferes with the ability of the Manager to supervise the operation of the Casino, or is not in compliance with one or more Legal Requirements, the Manager will notify HVC of such circumstance and HVC shall as expeditiously as possible remedy such defect. The obligation of HVC to proceed expeditiously to correct such condition shall apply regardless of whether or when insurance proceeds may be available to cover the necessary expenditures. If HVC does not proceed expeditiously to correct such condition, the Manager on seven (7) days written notice to HVC shall be entitled to do so. Any amounts expended by HVC in effecting the remedy of any such defect shall not be treated as Expenses and shall not be funded from the Capital Renewals Account, and HVC shall reimburse the Manager for any amounts pursuant to the immediately preceding sentence.

4.06 Acts of Supervisory Employees. If any supervisory employee of the Manager commits any act of fraud, gross negligence or wilful misconduct in connection with the operation of the Casino, then within five (5) business days after written notice from HVC, the Manager shall terminate the service of such supervisory employee at the Casino.

4.07 Affiliate Transactions. Except as otherwise contemplated herein, the Manager shall not, in the performance of its duties hereunder for the Casino and HVC, enter into or amend any transaction or contract with any Affiliate of the Manager if the terms of such transaction or contract are in the aggregate substantially more disadvantageous to the Casino and/or HVC than would be the case in an arm's length transaction, without the consent of HVC (which consent shall not be unreasonably withheld, conditioned or delayed).

ARTICLE V RETAINED RIGHTS, AUTHORITY AND RESPONSIBILITIES OF HVC

5.01 Retained Rights of HVC. All legal and equitable interest in the Casino and the improvements made thereto from time to time shall belong exclusively to HVC. Subject to the obligation of HVC to pay the Management Fees described in **Section 7.01** of this Agreement, HVC retains the exclusive right to receive and retain all of the Gross Revenues of the Casino, subject to the obligation on the part of HVC to pay the Expenses and the Management Fee.

5.02 Authority and Responsibilities of HVC. HVC expressly retains the following authority and responsibilities with respect to the conduct of the Casino:

5.02.1 Collection of Gross Revenues. Subject to payment of Expenses and the Management Fee, HVC will collect all of the Gross Revenues realized from the conduct of the Casino.

5.02.2 Provision of Working Capital. HVC will provide the Casino with sufficient working capital required for the customary conduct of the Casino; including without limitation, the currency and coin required to be maintained on site in connection with the operation of the Casino (i.e., the Casino bankroll, cage cash, etc.).

5.02.3 Payment of Amounts Owed to New York State, Expenses, Taxes and Other Charges. HVC will collect and remit to New York State all amounts required to be paid over to the State pursuant to the Gaming Act. HVC will promptly pay all Expenses incurred in the operation of the Casino. In addition, HVC will pay when due all taxes and other governmental charges and assessments incurred in connection with the Casino, or which pertain to the ownership, use and occupation of the Casino.

5.02.4 Payment for Capital Renewals. HVC will be responsible for the payment of all Capital Renewals. Such Capital Renewals, and the depreciation or amortization with respect thereto, shall not be considered Expenses for purposes of this Agreement.

5.02.5 Employment of Personnel. The on-site general manager of the Casino will be designated by the Manager, subject to the prior consent of HVC (which consent will not be unreasonably withheld, conditioned or delayed). In the event that HVC raises any objection to the conduct or performance of the Manager's on-site general manager, the Manager agrees to consider in good faith any concerns or objections that HVC has with respect to the conduct or performance of such general manager. HVC will hire, promote and discharge all other employees of the Casino, with such employees to be supervised and directed in the performance of their day-to-day duties by the Manager's on-site general manager to the extent provided in this Agreement. Notwithstanding the reserved right of HVC to hire and discharge its employees who work in the Casino, HVC will consider the suggestions and recommendations of the Manager with respect to the hiring, promotion and discharge of the employees who work in the Casino.

5.02.6 Labor Relations. HVC will control and be responsible for all negotiations with any labor union which represents employees of the Casino, and the Manager agrees to assist HVC in such negotiations to the extent reasonably requested by HVC, and to comply with the terms of any collective bargaining agreement that HVC may enter into with its employees.

5.02.7 Marketing and Advertising. HVC will implement the marketing, advertising and promotion programs for the Casino with oversight from the Manager and any third party marketing consultants that may be retained by HVC to promote the Casino, provided the expenditures for such programs are within the limits contained in the current Operating Budget. The annual Operating Budgets will establish the cost of complimentary items provided to patrons of the Casino in connection with the promotion of the Casino.

5.02.8 Utility Services. HVC will arrange for the delivery and hook-up of electricity, heat, lighting, natural gas, water, sewer, telephone and other utility services required for the operation of the Casino.

5.02.9 Security. HVC will provide all surveillance systems and security personnel required by any Legal Requirements, or otherwise consistent with good business practices, for the operation of the Casino.

5.02.10 Licenses and Permits. HVC will apply for, and use its commercially reasonable effort to obtain and maintain, all licenses, permits, authorizations and approvals required for the operation of the Casino, including without limitation, the License and all other licenses, permits, approvals and authorizations required for (i) the conduct of gaming at the Casino, and (ii) the sale of alcoholic beverages for on-premises consumption. HVC agrees to execute and deliver any and all applications and other documents and to provide all disclosures of information to governmental agencies as shall be reasonably required, and the Manager agrees to cooperate with HVC in all reasonable respects, in applying for, obtaining and maintaining such licenses, permits, approvals and authorizations, including without limitation, providing information requested by any governmental agency having jurisdiction over the

operations of the Casino as to the employees, directors or owners of Manager or any Affiliate of Manager.

5.02.11 Contracts and Leases. HVC will enter into any contracts for goods or services required by the Casino, and any leases for Equipment used in the Casino that is not purchased outright and owned by HVC.

5.02.12 Compliance with Loan Agreements and Mortgages. HVC will use its commercially reasonable efforts to cause the Casino to comply with all applicable covenants and provisions of all loan agreements and mortgages to which HVC is a party or by which its assets are bound, and pay, when due, the principal and interest due pursuant to such loan agreements and mortgages.

5.02.13 Legal Requirements. HVC will use its commercially reasonable efforts to do, or cause to be done, all such acts and things in and about the Casino as shall be reasonably necessary to comply with Legal Requirements and the terms of all insurance policies contemplated in **Article VIII** of this Agreement, provided that the Manager shall cooperate with HVC in this respect and shall notify HVC of any violation of such Legal Requirements with respect to which the Manager receives written notice, or otherwise obtains actual notice.

5.02.14 Legal Proceedings. HVC will institute and diligently pursue any and all legal actions or proceedings to collect charges, rent or other income derived from the operation of the Casino, or to terminate any contract or lease. HVC shall take appropriate steps to challenge, protest, appeal and/or litigate to final decision in any appropriate court or forum any action or proposed action in which HVC is a party and which would result in the suspension of the License or would materially and adversely impact the revenues or expenses of the Casino.

ARTICLE VI ACCOUNTING AND CASH MANAGEMENT

6.01 Bank Accounts. HVC shall select a bank or banks (collectively, the “Bank”) to receive and maintain the Gross Revenues generated by the operation of the Casino. All amounts realized from the operation of the Casino shall be deposited in accordance with customary practices in the industry (or at such other frequency as HVC and the Manager shall mutually establish) into one or more accounts at the Bank established by HVC (the “Bank Accounts”). Payment of all Expenses and Management Fees shall be made by HVC from the Bank Accounts by cash, check, wire transfer or automated clearing house transfer.

6.02 Collection and Disbursement of Funds. The funds generated by the operation of the Casino will be dealt with as follows:

6.02.1 Deposit of Revenues. In accordance with customary practices in the industry (or at such other frequency as HVC and the Manager shall mutually

establish), the Manager shall arrange for the deposit of all amounts realized from the conduct of the Casino into the Bank Accounts established in accordance with **Section 6.01**; provided that the Manager shall be permitted to withhold reasonable amounts to replenish the Casino bankroll and cage cash. The Manager shall arrange for a bonded transportation service to effect the safe transportation of any physical receipts of the Casino to the Bank, and the cost of such transportation service shall be an Expense.

6.02.2 Payment of Amounts Owed under the Gaming Law. The Manager shall arrange for the transfer of the amount realized from the operation of the Casino which, after the payment of winnings and prizes to customers, is required to be remitted to the New York State or any other third party in accordance with the Gaming Law, with such frequency as is set forth in the Gaming Law or in any other Legal Requirements.

6.02.3 Application of Gross Revenues. The Gross Revenues realized by HVC from the operation of the Casino will be applied as follows:

- (a) First, to the payment of, or provision for, all Expenses incurred or anticipated to be incurred in connection with the Casino;
- (b) Second, to the monthly payment of any accrued and unpaid interest and debt servicing costs with respect to any outstanding debt financing of HVC;
- (c) Third, to the payment of the monthly Management Fee described in **Exhibit A** of this Agreement; and
- (d) Thereafter, any remaining amount of the Gross Revenues of HVC not required to meet the foregoing Expenses, accrued interest charges and Management Fees payments will be retained by HVC.

6.03 Financial Statements. HVC, with the assistance of the Manager, will prepare income and expense statements on a monthly basis which reflect the results of operation of the Casino, supplemented by (i) a statement reflecting the Actual EBITDA (as defined in the LLC Agreement), and (ii) a calculation of the Management Fee to which the Manager is entitled to receive for such month (the "Monthly Statements"). Each Monthly Statement will be provided by HVC to the Manager on or before the thirtieth (30th) day following the end of the month to which such Monthly Statement relates. If the New York State Gaming Commission requires monthly reports, then the Monthly Statements shall be in the same format as is prescribed by the New York State Gaming Commission, provided such format discloses information sufficient to allow computation of the Management Fee. In addition, HVC will direct its firm of independent certified public accountants to provide HVC and the Manager with audited financial statements of the financial condition and results of operation of the Casino within one hundred twenty (120) days after the close of each Operating Year (the "Audited Statements"). The Audited Statements will include balance sheets, income and expense statements setting forth in reasonable detail all Gross Revenues and Expenses, statements of changes in cash position and footnote disclosures as appropriate. In addition to the Audited Statements, under a separately agreed upon procedure,

HVC will direct its firm of independent certified public accountants to provide a computation of Actual EBITDA, a computation of the Management Fee payable by HVC to the Manager pursuant to **Section 7.01** of this Agreement for the Operating Year, and any other schedules as may be required in connection with proper auditing and financial reporting requirements. After the first full year of operations, the Monthly Statements shall be prepared to reflect comparative results with the same month of the prior year, and the Audited Statements shall compare results with the prior Operating Year.

6.04 Books of Account. HVC will maintain accurate books and records which reflect the financial activity of the Casino in conformity with generally accepted accounting principles consistently applied. The books of account shall reflect detailed day-to-day operations of the Casino and shall utilize accounting systems and procedures which, at a minimum, (i) include a system of internal accounting controls, (ii) permit the preparation of financial statements in accordance with generally accepted accounting principles, (iii) be susceptible to audit, and (iv) permit the calculation and payment of Management Fees and expense reimbursements to the Manager in accordance with the terms of this Agreement. Such books of account shall be maintained at the Casino, and duly authorized representatives of the Manager shall have access to the records of the daily operations of the Casino and the right to inspect, examine, and copy all such books and supporting business records. The Manager shall also have the right, at its sole cost and expense, to perform special or independent audits of all financial records relating to the Casino as the Manager elects.

ARTICLE VII MANAGEMENT FEES AND REIMBURSEMENT OF EXPENSES

7.01 Management Fees. In consideration for the management services to be provided by the Manager pursuant to this Agreement, HVC will make payments to the Manager at the times and in the amounts set forth on **Exhibit A**.

ARTICLE VIII INSURANCE

8.01 Insurance Coverage. During the term of this Agreement, HVC will obtain or cause its contractor to obtain for its benefit, insurance coverage in customary amounts, scope and terms for the Casino, and such other coverage and on such terms as may be required by any applicable financing for the Casino. The cost of the insurance required pursuant to this **Section 8.01** shall be a Development Cost during the construction phase, and an Expense after the Casino Opening Date. HVC and the Manager will consult with one another regarding the terms of such coverage.

8.02 Policies and Endorsements. The following provisions will apply to the policies of insurance to be maintained during the term of this Agreement:

8.02.1 Policies. All insurance provided for under **Section 8.01** shall be effected by policies issued by insurance companies of good reputation and of sound and adequate financial responsibility. The party procuring such insurance shall deliver to the other party certificates of insurance with respect to all of the policies of insurance so procured, including existing, additional and renewal policies, and in the case of insurance about to expire, shall deliver certificates of insurance with respect to the renewal policies to the other party not less than thirty (30) days after the respective dates of expiration.

8.02.2 Endorsements. All policies of insurance provided for under this **Article VIII** shall provide that (a) such policy shall not be canceled or materially changed without at least thirty (30) days prior written notice to HVC and the Manager, and (b) no act or omission of HVC or the Manager shall affect the obligation of the insurer to pay the full amount of any loss sustained. To the extent applicable, all insurance policies procured pursuant to this **Article VIII** shall also contain an endorsement to the effect that such insurance is primary to any similar insurance maintained by the Manager.

8.02.3 Named Insureds. All insurance policies required hereunder shall name the respective Affiliates of HVC and the Manager, and the directors, officers, agents and employees of HVC, the Manager and each of their Affiliates, as additional insureds, if such parties may be named as additional insureds without the payment of an additional premium.

8.02.4 Evidence of Insurance. As soon as practicable prior to the effective date of the applicable coverages, the party which obtains the insurance coverages under this **Article VIII** shall provide the other party with binders evidencing that the applicable insurance requirements of this Agreement have been satisfied and, as soon as practicable thereafter, shall provide true and complete copies of policies for such insurance. As soon as reasonably practicable prior to the expiration date of each such policy, the party obtaining such insurance shall provide the other party with binders evidencing renewal of existing or acquisition of new coverages. True and complete copies of renewed or new policies or certificates of insurance shall be provided by the party obtaining insurance coverage under this **Article VIII** to the other party as soon as practicable after renewed or new coverages become effective.

ARTICLE IX TRADE NAMES, CONFIDENTIAL INFORMATION, AND NON-SOLICITATION

9.01 Business Name. The Casino shall be operated under such name as HVC shall designate from time to time.

9.02 Trade Names, Trademarks and Service Marks. After the Commencement Date, HVC and the Manager will determine the trade names, trademarks and service marks (the "Marks") to be used in connection with the operation of the Casino. The Manager will arrange for the purchase and installation of signage throughout the Casino which makes use of the Marks,

with such signage and its placement to be subject to the consent of HVC (which consent will not be unreasonably withheld), and the Marks will be used in connection with the promotion and marketing of the Casino. The costs of purchasing and installing such signage and the costs of promoting and marketing the Casino shall be treated as Expenses for purposes of this Agreement.

Unless licensed from a third party in accordance with the terms hereof, ownership of the Marks shall, for all purposes, belong exclusively to HVC.

9.03 Confidential Information. HVC and the Manager each agree that any information received concerning the other party hereto during the performance of this Agreement, regarding such other party's organization, financial matters, marketing plans, customer lists, or other information of a propriety nature, shall be treated by the parties in full confidence and shall not be disclosed to any third party other than (i) the New York State Gaming Commission, (ii) any other governmental agency having jurisdiction over the Casino, or (iii) as otherwise expressly required by Legal Requirements applicable to any party hereto. HVC acknowledges that certain gaming licenses are currently issued to and held by Affiliates of the Manager, and that the Affiliates of the Manager may, in the future, apply for additional gaming licenses. Accordingly, certain Legal Requirements may require the Affiliates of the Manager to disclose private or confidential information about HVC and/or the operations of the Casino and HVC hereby consents to such disclosure. HVC further agrees to refrain from any action which may affect the licenses issued to the Affiliates of the Manager, so long as the same will not unduly interfere with HVC's operation.

9.04 Restriction on Employee Solicitation. Each of the parties hereto agrees to refrain from soliciting the employment of, or hiring or otherwise retaining the service of, the Restricted Employees during period beginning on the License Award Date and for a period of twelve (12) months after the expiration or termination of this Agreement; provided, however, that no party hereto shall be precluded from hiring any such individual who was previously employed by such party hereto or one of its Affiliates immediately prior to such individual's employment with such party or its Affiliate or otherwise initiates contact with such party hereto and/or responds to a general advertisement or notice in any form (paper, electronic or otherwise), including any general job posting or listing on the internet or elsewhere, not specifically directed at any or all of the other party's or its Affiliates' employees (it being understood in each case that any such general advertisement or notice, including any general job posting or listing on the internet or elsewhere, shall not constitute direct or indirect solicitation).

9.05 Intellectual Property Matters. The parties hereto acknowledge and agree that in the course of performing its duties hereunder, the Manager may use certain intellectual property rights (including patents, copyrights, trademarks, trade secrets and other intellectual property rights) that are owned by the Manager or its Affiliates (other than HVC) in connection with the operation of the Casino (the "Manager IP"). Accordingly, and notwithstanding anything to the contrary herein, the Manager is, and shall be, the sole and exclusive owner of all right, title and interest in all Manager IP.

ARTICLE X
REPRESENTATIVES OF THE PARTIES

10.01 Designation of Representatives. Each of HVC and the Manager will designate one representative and one alternate representative to act in the event the primary representative is unavailable or refuses to act within a reasonable time. Such representative will act as the primary contact person of such party during the performance of this Agreement, and shall administer such party's obligations under this Agreement. The representatives of HVC and the Manager will meet regularly throughout the term of this Agreement, with such frequency as may reasonably be determined by HVC and the Manager to be necessary.

ARTICLE XI TERM OF AGREEMENT

11.01 Term of the Agreement. The term of this Agreement shall commence as of the date of its execution, and shall continue until the [REDACTED] anniversary of the Casino Opening Date or at the end of any extension provided for herein unless terminated as provided for in this **Article XI** or as a result of a sale of the Casino to the extent provided in Article XIV herein. Upon the expiration of the initial term, this Agreement shall be automatically renewed on a continuous basis for additional [REDACTED] terms commencing upon the expiration of the prior term unless terminated by the Manager effective at the end of such term, by written notice to the other given no less than one hundred eighty (180) days prior to the end of any such term of this Agreement, unless earlier terminated earlier pursuant to the terms of **Section 11.02**.

11.02 Termination on Cessation of the Business. Notwithstanding the provisions of **Section 11.01** above, this Agreement may be terminated by either party at any time, without regard to the existence or absence of "cause", if the right of HVC to conduct the gaming operations at the Casino expires or is materially and permanently restricted by:

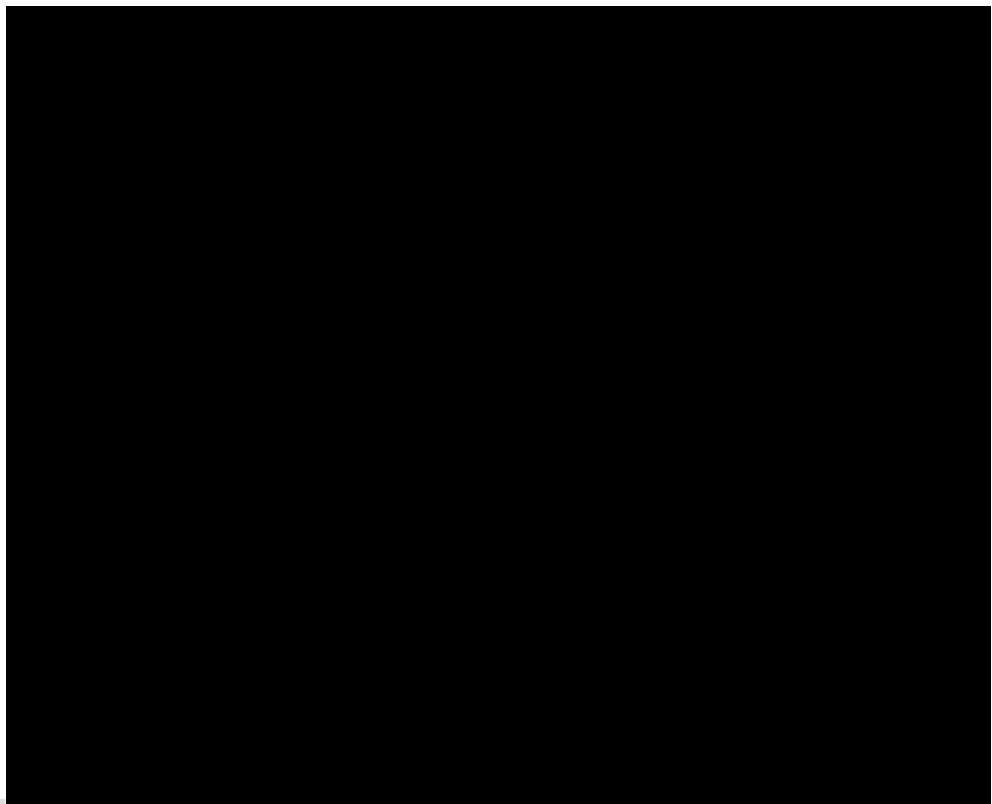
- (a) Entry of a final, non-appealable judgment or order of a court of competent jurisdiction declaring the Gaming Act to be unconstitutional or otherwise invalid, and ordering (directly or by necessary implication) HVC to cease to conduct all gaming operations. If a non-final court order temporarily restrains the conduct of the gaming business at any time, this Agreement shall not thereby be terminated, but the parties' respective obligations of performance shall be suspended during the period of such restraint (other than the obligations to pay the Management Fee for any pre-suspension periods) and this Agreement shall remain suspended (but not terminated) pending the final outcome of such court proceedings.

11.03 Termination by HVC for Cause. HVC may terminate this Agreement by written notice to the Manager upon the occurrence of any of the following events ("Events of Default"):

- (a) If (x) the Manager breaches, in a material manner, any obligation to perform or observe any provision of this Agreement to be performed or observed by the Manager (other than any obligation under Article III hereunder, it being understood that the Manager is performing such functions without compensation), (y) the Manager further fails to cure

such default within thirty (30) business days after the receipt of written notice of default from HVC, which notice shall state the nature of the default in reasonable detail and (z) such breach has caused, or would reasonably be expected to cause, a “material adverse effect” on the business of the Casino (taken as a whole). For such purposes, “material adverse effect” will have the meaning given to such term in the common law generally applicable to mergers and acquisitions in the State of New York. Notwithstanding the foregoing, if any such default is of such a nature that it cannot reasonably be cured within such thirty (30) business day period, then the default shall be deemed to have been timely cured if the Manager commences a cure within such thirty (30) business days, and thereafter diligently prosecutes such cure and substantially cures such default within a reasonable period of time.

(b)



(c) If the Manager files a voluntary petition in bankruptcy, or if there is filed against the Manager any involuntary bankruptcy petition or other insolvency proceeding initiated by the Manager’s creditors, which involuntary filing is not dismissed within sixty (60) days after it is filed.

(d) If (x) any state or federal court or other governmental agency having jurisdiction over the Casino or over the Manager (i) revokes any gaming license held by the Manager; or (ii) orders HVC to discontinue the retention of the Manager pursuant to this Agreement; or (iii) advises HVC in writing that its authority to operate the Casino will be revoked unless

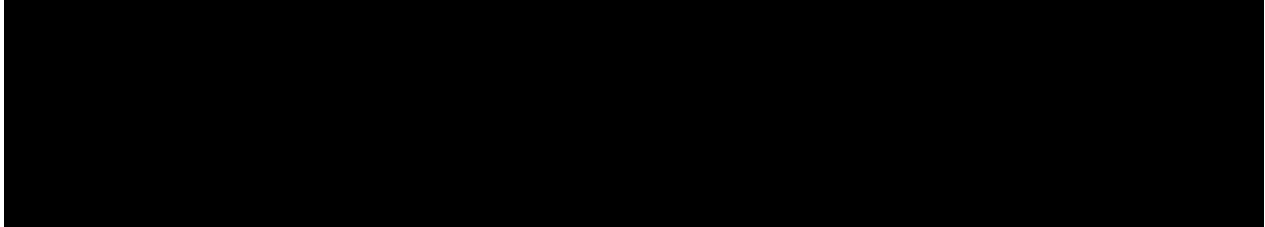
the affiliation between HVC and the Manager is terminated (collectively, a “Manager Gaming Problem” and (y) such Manager Gaming Problem is not cured within thirty (30) days of the Manager receiving written notice from HVC of any such revocation, order or advisory directive or any lesser time required by the Gaming Act. The Manager shall be entitled to contest such action to the fullest extent permitted by law before such termination becomes effective, and in such event, HVC shall suspend performance of the Manager’s services hereunder as well as the obligation to pay for such services rendered during such suspension, during the pendency of any such contest.


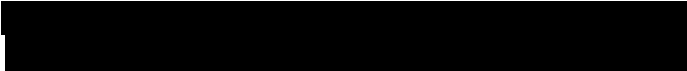
Should any of the foregoing conditions exist, then HVC shall have the right to terminate this Agreement by written notice to the Manager given at any time following the occurrence of such event and the expiration of any applicable grace or cure period specified above, and this Agreement shall terminate upon the date specified therein, which date shall be not less than thirty (30) days nor more than seventy-five (75) days after the date of the giving of such final notice of termination unless a court or governmental agency requires earlier termination of the Manager’s services.

11.04 Termination by the Manager for Cause. The Manager may terminate its obligation to continue to perform its obligations set forth in this Agreement by written notice to HVC upon the occurrence of any of the following Events of Default:

- (a) If HVC fails to pay the Management Fees on a monthly basis when due, and such failure continues for five (5) business days after receipt of notice of default from the Manager.
- (b) If HVC fails, in a material manner, to perform or observe any other provision of this Agreement to be performed or observed by HVC, and further fails to cure such default within fifteen (15) business days after the receipt of written notice of default from the Manager, which notice shall state the nature of the default in reasonable detail. Notwithstanding the foregoing, if the default is of such a nature that it cannot reasonably be cured within such fifteen (15) day period, then the default shall be deemed to have been timely cured if HVC commences a cure within such fifteen (15) days, and thereafter diligently prosecutes such cure and completely cures such default within a reasonable period of time.
- (c) If HVC files a voluntary petition in bankruptcy, or if there is filed against HVC any involuntary bankruptcy petition or other insolvency proceeding initiated by the creditors of HVC, which involuntary filing is not dismissed within sixty (60) days after it is filed.
- (d) HVC has not been awarded and issued a License or all Licenses applicable to the Hudson Valley-Catskill Region have been awarded to third parties.

Should any of the foregoing conditions exist, then the Manager shall have the right to terminate this Agreement by written notice to HVC given at any time following the occurrence of such event and the expiration of any applicable grace or cure period specified above, and this Agreement shall terminate upon the date specified therein, which date shall be not less than thirty (30) days nor more than seventy-five (75) days after the date of the giving of such final notice of termination.


11.06 Effect of Termination, and Consequences of a Default. Upon the termination of this Agreement by either party, the Manager will surrender possession and control of the Casino to HVC. No obligation of either HVC or the Manager to pay any amount or perform any duty which became accrued prior to the date of termination shall expire or be released as a result of the termination of this Agreement, and such obligation shall only be satisfied when the same has been fully paid or performed. In the event of termination of this Agreement by HVC pursuant to the provisions of **Section 11.03** hereof, HVC shall have the right to recover all direct out-of-pocket costs incurred by HVC as a result of the Manager's Default. In the event of termination of this Agreement by the Manager pursuant to the provisions of **Section 11.04** hereof, the Manager shall have the right to recover all direct out-of-pocket costs incurred by the Manager as a result of the Default by HVC. Notwithstanding the use of the phrase "termination of this Agreement" any termination shall affect only the parties' respective duties of performance after the effective date of termination, and the terms of this Agreement shall continue to govern (i) the damages recoverable and other remedies available to an aggrieved party in the event of a Default, and (ii) the respective rights and obligations of the parties as to matters arising prior to the effective date of termination.

11.07 No Breach, Default or Event of Default. Notwithstanding anything to the contrary contained herein, in no event shall the Manager be deemed in breach of its duties hereunder, nor shall a Default or an Event of Default occur, solely by reason of 
, or (ii) any other acts or omissions not otherwise constituting a breach of this Agreement, it being the intention and agreement of the parties hereto that the Manager's sole obligation hereunder shall be to act in conformity with the express terms and provisions of this Agreement, or (y) the imposition of fines or penalties by any Gaming Authority unless such fines or penalties are the result of gross negligence, bad faith or willful misconduct on the part of the Manager. To the fullest extent permitted by law, none of the Manager nor the foregoing Persons shall be liable for damages or otherwise to HVC for any act or omission performed or omitted by such Person, unless it is determined that such actions or omissions (a) constituted gross negligence, bad faith or willful misconduct of the Manager, or (b) were willfully taken in contravention of this Agreement in bad faith by the Manager.

11.08 Extraordinary Events. Notwithstanding any provision of this Agreement to the contrary, if the failure of HVC or the Manager to conform to, keep, perform, fulfill or satisfy any representation, warranty, covenant, undertaking, obligation, standard, test, or condition set forth in this Agreement is caused in whole or in part by one or more Extraordinary Events, then such failure shall not constitute an Event of Default or Default under this Agreement, and such failure shall be excused for as long as the failure is caused in whole or in part by such Extraordinary Event. In order to have any failure by a party be excused pursuant to this **Section 11.08**, the party claiming that an Extraordinary Event caused such failure must notify the other party within sixty (60) days after the Extraordinary Event first begins to affect performance under or other compliance with the terms of this Agreement.

11.09 LIMITATION OF LIABILITY; EXCLUSION OF PUNITIVE AND CONSEQUENTIAL DAMAGES.

(a) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY FOR EACH OPERATING YEAR, UNDER NO CIRCUMSTANCES SHALL THE MAXIMUM AGGREGATE AMOUNT FOR WHICH THE MANAGER AND ITS AFFILIATES SHALL BE LIABLE TO HVC AS A RESULT OF ALL ACTS OR OMISSIONS (OR SERIES OF RELATED ACTS OR OMISSIONS) ARISING DURING SUCH OPERATING YEAR UNDER OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF (REGARDLESS OF WHETHER SUCH LIABILITY IS BASED IN CONTRACT, BREACH OF WARRANTY, TORT, INTENTIONAL ACTIONS, NEGLIGENCE, BREACH OF DUTY, OR ANY OTHER THEORY) EXCEED [REDACTED] (IT BEING ACKNOWLEDGED AND AGREED THAT THE FOREGOING LIMITATION ON LIABILITY IS AN ANNUAL LIMIT THAT IS NOT CUMULATIVE AND, ACCORDINGLY, SIMILAR OR RELATED CLAIMS THAT CARRY OVER FROM ONE YEAR TO THE NEXT MAY NOT BE DIVIDED TO MULTIPLE EVENTS IN DIFFERENT YEARS TO AVOID THE FOREGOING ANNUAL LIMITATION ON LIABILITY).

(b) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, AND TO THE FULLEST EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES SHALL ANY PARTY OR ITS AFFILIATES BE LIABLE HEREUNDER OR TO THE OTHER PARTIES OR THEIR RESPECTIVE AFFILIATES:

(i) FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, INCOME, PROFITS OR ANTICIPATED PROFITS, BUSINESS OR BUSINESS OPPORTUNITY, SAVINGS, DATA OR BUSINESS REPUTATION) ARISING UNDER OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, UNLESS THE FOREGOING ARE THE RESULT OF GROSS NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT, OR A MATERIAL BREACH

OF THIS AGREEMENT UNDERTAKEN WILLFULLY, IN BAD FAITH, OR AS THE RESULT OF GROSSLY NEGLIGENT ACTIONS OR OMISSIONS; OR

(ii) FOR ANY PUNITIVE, EXEMPLARY OR OTHER SPECIAL DAMAGES ARISING UNDER OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, BREACH OF WARRANTY, TORT, INTENTIONAL ACTIONS, NEGLIGENCE, BREACH OF DUTY, OR ANY OTHER THEORY, AND REGARDLESS OF WHETHER SUCH PARTY OR ITS RESPECTIVE AFFILIATES HAVE BEEN ADVISED OF, KNEW OF, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES BEING EXCLUDED FROM RECOVERY PURSUANT TO THIS **SECTION 11.09**.

(c) EACH PARTY, AS A MATERIAL INDUCEMENT TO THE OTHER PARTY TO ENTER INTO AND PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, EXPRESSLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ITS RIGHT TO ASSERT ANY CLAIM RELATING TO DAMAGES EXCLUDED FROM RECOVERY PURSUANT TO THIS **SECTION 11.09** AND AGREES NOT TO SEEK TO RECOVER ANY SUCH DAMAGES IN CONNECTION WITH ANY CLAIM, ACTION, SUIT OR PROCEEDING ARISING UNDER OR IN RELATION TO THIS AGREEMENT. IN NO EVENT SHALL THIS **SECTION 11.09** BE DEEMED OR DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, AND THIS **SECTION 11.09** SHALL APPLY EVEN IF ANY OTHER WARRANTY, REMEDY OR OTHER PROVISION OF THIS AGREEMENT HAS BEEN DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

ARTICLE XII
WARRANTIES, REPRESENTATIONS,
AND ADDITIONAL COVENANTS OF THE PARTIES

12.01 Restriction on Competitive Activities.

(a) In order to more effectively protect the value and goodwill of HVC, the Manager covenants and agrees that for so long as it is serving as the Manager hereunder, the Manager will not (nor will any of its Affiliates) directly or indirectly own, manage, operate, control or participate in a casino, gaming facility, race track or off-track betting facility (a "Competing Business") within the Hudson Valley-Catskill Region in the State of New York; provided, however, that none of the following shall be prohibited, restricted or otherwise subject to this Section 12.01: (i) any Carve-Out Activity, (ii) SHRI's ownership and operation of its existing facility in the City of Saratoga Springs or (iii) ownership or participation

by the Manager or any of its Affiliates in a casino in Albany, Rensselaer or Schenectady counties of New York State.

- (b) It is agreed that HVC would be irreparably damaged by reason of any violation of the provisions of this Section 12.01, and that any remedy at law for a breach of such provisions would be inadequate. Therefore, HVC shall be entitled to seek injunctive or other equitable relief (including a temporary restraining order, a temporary injunction or a permanent injunction) against the Manager, the Manager's Affiliates, agents, assigns or successors for a breach or threatened breach of such provisions and without the necessity of proving actual monetary loss. It is expressly understood among the parties that this injunctive or other equitable relief shall not be HVC's exclusive remedy for any breach of this Section 12.01 and HVC shall be entitled to seek any other relief or remedy that either may have by contract, statute, law or otherwise for any breach hereof, and it is agreed that HVC shall also be entitled to recover its reasonable and actual attorneys' fees and expenses in any successful action or suit against the Manager relating to any such breach.

12.02 Representations and Warranties of HVC. As an inducement to the Manager to execute this Agreement, HVC represents, warrants and covenants to the Manager, as of the date hereof, the truth and accuracy of the matters set forth in this **Section 12.02**.

- (a) HVC is duly organized, validly existing and in good standing under the laws of the State of Delaware, and is duly qualified to conduct business in the State of New York, and has full power, authority and legal right to execute, perform and timely observe all of the provisions of this Agreement, and the agreements and instruments contemplated thereby or delivered pursuant thereto, which are to be performed or observed by HVC. The execution, delivery and performance of this Agreement, and the agreements and instruments contemplated thereby or delivered pursuant thereto by HVC have been duly authorized by all necessary action on the part of HVC.
- (b) This Agreement, and the agreements and instruments contemplated thereby or delivered pursuant thereto constitute valid and binding obligations of HVC and do not constitute a breach of or default under any of the organizational and governing documents of HVC or the terms, conditions or provisions of any law, order, rule, regulation, judgment, decree, loan agreement, mortgage, or other agreement or instrument to which HVC is a party or by which it or any substantial portion of its assets (including the Casino) is bound or affected.
- (c) No approval of any third party other than the New York State Gaming Commission that has not been obtained prior to the execution of this Agreement, and the agreements and instruments contemplated thereby or

delivered pursuant thereto is required in connection with the execution and performance of such agreements, documents and instruments by HVC. HVC believes that approval of the New York State Gaming Commission is not required for HVC to engage the Manager pursuant to this Agreement, but if such approval is required, the parties mutually agree to exert commercially reasonable efforts to obtain such approval.

- (d) HVC holds (or will hold prior to the Casino Opening Date) all permits, licenses, authorizations and approvals necessary to the ownership and operation of the Casino in accordance with the terms of the Agreement and any applicable Legal Requirements.
- (e) To its knowledge, HVC has complied with and is in compliance in all material respects with all federal, state, local and foreign statutes, laws, ordinances, regulations, rules, judgments, orders and decrees applicable to HVC or its assets, business or operations, and to its knowledge there is no pending or threatened claim of default under or violation of any statute law, ordinance, regulation, rule, judgment, order or decree which default or violation would individually or in the aggregate have a material adverse effect upon HVC.
- (f) No representation or warranty contained herein by or on behalf of HVC contains an untrue statement of material fact or omits to state a material fact necessary to make the statements contained therein not misleading.

12.03 Representations and Warranties of the Manager. As an inducement to HVC to execute this Agreement, the Manager represents, warrants and covenants to HVC, as of the date hereof, the truth and accuracy of the matters set forth in this **Section 12.03**.

- (a) The Manager is duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power, authority and legal right to execute, perform and timely observe all of the provisions of this Agreement, and the agreements and instruments contemplated thereby or delivered pursuant thereto, which are to be performed or observed by the Manager. The execution, delivery and performance of this Agreement, and the agreements and instruments contemplated thereby or delivered pursuant thereto by the Manger have been duly authorized by all necessary action on the part of the Manager.
- (b) This Agreement and the agreements and instruments contemplated thereby or delivered pursuant thereto constitute valid and binding obligations of the Manger and do not constitute a breach of or default under any of the organizational and governing documents of the Manager or the terms, conditions or provisions of any law, order, rule, regulation, judgment, decree, agreement or instrument to which the Manager is a party or by which it or any substantial portion of its assets is bound or affected.

- (c) No approval of any third party other than the New York State Gaming Commission that has not been obtained prior to the execution of this Agreement and the agreements and instruments contemplated thereby or delivered pursuant thereto is required in connection with the execution and performance of such agreements, documents and instrument by the Manager. The Manager has no knowledge of any facts that it reasonably believes would cause the New York State Gaming Commission to disapprove of engaging Manager.
- (d) There is no litigation or proceeding pending or, to the knowledge of Manager, threatened against the Manager that seeks to prevent the parties from entering into this Agreement.
- (e) The Manager has filed or caused to be filed all material federal, state and local tax returns and reports which are required to be filed, and has paid or caused to be paid all taxes as shown on said returns or any assessment received by it, to the extent that such taxes have become due.
- (f) The Manager is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would individually or in the aggregate have a material adverse effect upon the Manager's ability to perform its obligations under this Agreement, nor is the Manager in violation of any terms of any order, writ, judgment, injunction, decree, statute, rule or regulation to which the Manager is subject which violation would individually or in the aggregate have a material adverse effect upon the Manager's ability to perform its obligations under this Agreement.
- (g) To its knowledge, the Manager has complied with and is in compliance in all material respects with all federal, state, local and foreign statutes, laws, ordinances, regulations, rules, judgments, orders and decrees applicable to the Manager or its assets, business or operations, and to its knowledge there is no pending or threatened claim of default under or violation of any statute law, ordinance, regulation, rule, judgment, order or decree which default or violation would individually or in the aggregate have a material adverse effect upon the Manager.
- (h) No representation or warranty contained herein by or on behalf of the Manager contains an untrue statement of material fact or omits to state a material fact necessary to make the statements contained therein not misleading.

12.04 Additional Affirmative Covenants of the Parties. HVC and the Manager further covenant and agree as follows:

12.04.1 Compliance with Laws. Each of HVC and the Manager agree to use their commercially reasonable efforts to comply with all applicable laws, ordinances, orders and regulations in connection with the performance of their obligations hereunder, and to deliver to the other party hereto copies of any notices of significant violations of law, ordinances, orders and regulations outside the ordinary course of business, that are issued by any governmental authority having jurisdiction over the construction, ownership or operation of the Casino; provided, however, that HVC shall be responsible for obtaining and maintaining the License. Each of HVC and the Manager shall use its commercially reasonable efforts to obtain and maintain any necessary licenses, permits, authorizations and approvals required by it for the operation of the Casino in the manner contemplated in this Agreement, and to assist and cooperate with the other party hereto when reasonably requested in obtaining and maintaining any licenses, permits, authorizations and approvals required by such other party. Each of HVC and the Manager shall, at their own expense, maintain in full force and effect throughout the term of this Agreement, its own legal existence and the rights required for it timely to observe and perform all of the terms and conditions of this Agreement. In no event shall the Manager be deemed in breach of this **Section 12.04.1** solely by reason of the imposition of fines or penalties by any Gaming Authority unless such fines or penalties are the result of gross negligence, bad faith or willful misconduct on the part of the Manager.

12.04.2 Filing of Reports. Each of HVC and the Manager shall promptly and timely file any and all filings, reports, certificates and applications with governmental agencies which are necessary or appropriate for the parties to operate the Casino in the manner contemplated by this Agreement.

12.04.3 Further Assurances. Each of HVC and the Manager shall execute and deliver from time to time, promptly after any reasonable request therefor made by the other party hereto, any and all instruments, agreements and documents necessary, and shall take such other action, as the other party may reasonably deem necessary or desirable to accomplish the purposes and intent of this Agreement. It is the understanding and intention of the parties that operation of Casino shall conform to and comply with all applicable gaming statutes in the State of New York, including the Gaming Act. The parties agree to execute such additional amendments or agreements to cause this Agreement to conform to any requirements of New York law as either party may determine in good faith to be reasonably necessary in order to give effect to the spirit and intent of this Agreement.

12.04.4 Notice of Litigation. Each of HVC and the Manager shall provide the other party hereto with prompt notice of any pending, threatened or contemplated action, suit or proceeding before or by any court or any federal, state or local governmental authority or agency which would reasonably be expected to result in any material adverse change in the condition (financial or otherwise), business or prospects of the transactions proposed herein or would reasonably be expected to materially adversely affect any of the property or assets to be constructed or managed in connection with this Agreement.

12.04.5 Performance Standards. Notwithstanding anything to the contrary contained herein, the parties hereto agree that the Manager will use commercially reasonable efforts to perform its obligations pursuant to this Agreement, but that the Manager will not be in breach of its obligations hereunder unless it is determined that its actions or omissions (x) constitute gross negligence, bad faith or willful misconduct, or (y) were willfully taken in contravention of this Agreement in bad faith.

ARTICLE XIII INDEMNIFICATION

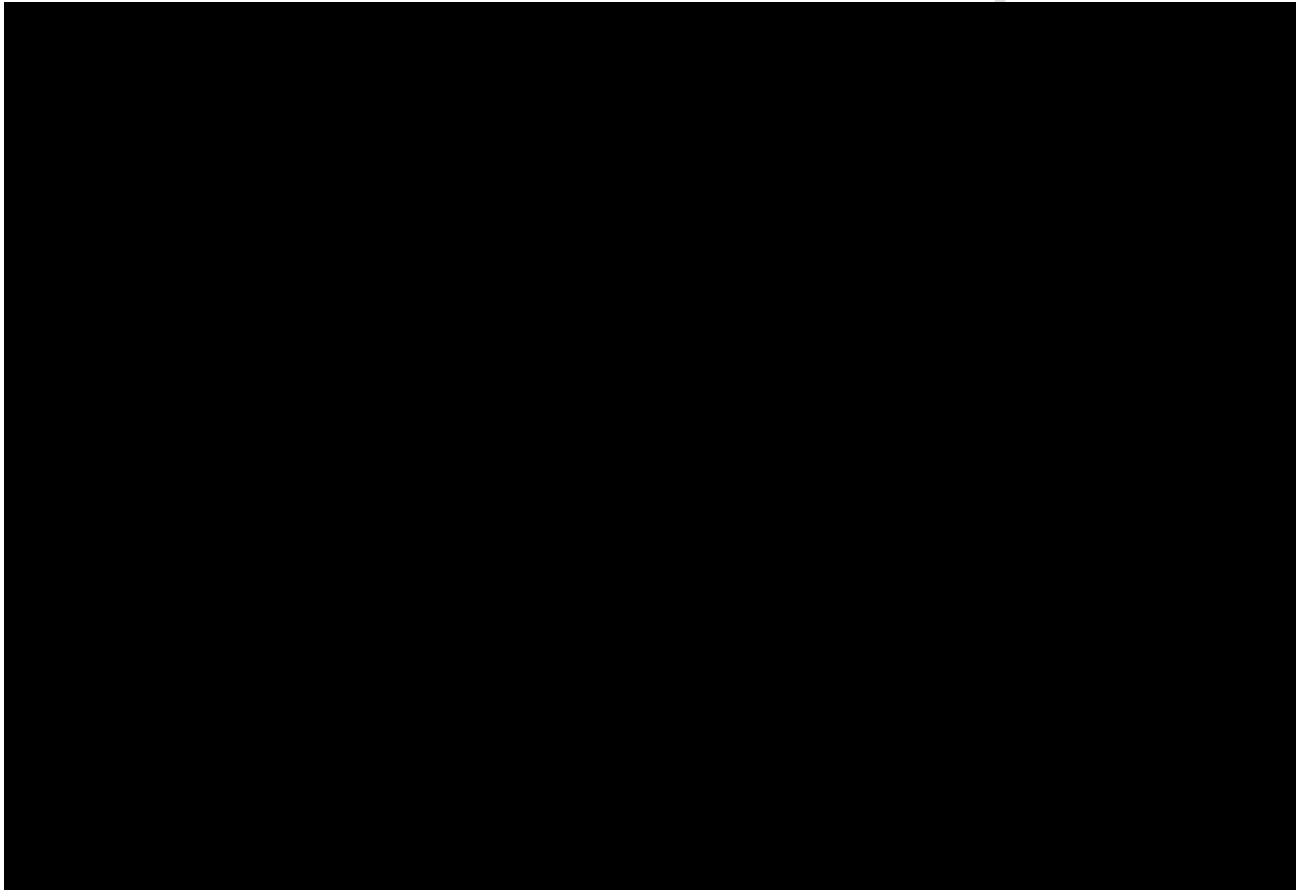
13.01 Indemnification of the Manager. To the fullest extent permitted by law, HVC shall indemnify, defend and hold the Manager and its Affiliates, officers, directors, shareholders, partners, members, direct and indirect equityholders, employees, trustees, representatives and agents harmless from and against any and all claims, demands, actions (including enforcement proceedings initiated by any government agency), penalties, suits, losses and liabilities (including the cost of defense, settlement, appeal, reasonable attorneys' fees and disbursements and any other amounts that the Manager is required to pay to third parties in connection with such matters, all of which shall be reimbursed as incurred) arising out of or relating to any act or omission performed or omitted pursuant to this Agreement or in connection with the Casino, provided that HVC shall have no such obligations in respect of the foregoing to the extent it is determined that the Manager's actions or omissions (x) constituted gross negligence, bad faith or willful misconduct, or (y) were willfully taken in contravention of this Agreement in bad faith. Any indemnity pursuant to this **Section 13.01**, (i) shall not be deemed exclusive of any other rights to which the Manager or any of the foregoing Persons may be entitled under any applicable statute, agreement or otherwise, (ii) shall continue as to the Manager or any of the foregoing Persons who have ceased to serve in such capacity and (iii) shall inure to the benefit of the heirs, successors, assigns and administrators of the Manager or such Person, as applicable. Neither the Manager nor any of the foregoing Persons shall be denied indemnification in whole or in part because the Manager or such Person had an interest in the transaction with respect to which the indemnification applies if the transaction is otherwise permitted by the terms of this Agreement.

13.02 Indemnification of HVC. To the fullest extent permitted by law, the Manager shall indemnify, defend and hold HVC and its Affiliates, officers, directors, shareholders, partners, members, direct and indirect equityholders, employees, trustees, representatives and agents harmless from and against any and all claims, demands, actions (including enforcement proceedings initiated by any government agency), penalties, suits, losses and liabilities (including the cost of defense, settlement, appeal, reasonable attorneys' fees and disbursements and any other amounts that HVC is required to pay to third parties in connection with such matters, all of which shall be reimbursed as incurred) arising out of or relating to any act or omission performed or omitted by the Manager pursuant to this Agreement or in connection with the Casino if it is determined that such acts or omissions (x) constituted gross negligence, bad faith or willful misconduct or (y) were willfully taken in contravention of this Agreement in bad faith. Any indemnity pursuant to this **Section 13.02**, (i) shall not be deemed exclusive of any other rights to

which HVC or any of the foregoing Persons may be entitled under any applicable statute, agreement or otherwise, (ii) shall continue as to HVC or any of the foregoing Persons who have ceased to serve in such capacity and (iii) shall inure to the benefit of the heirs, successors, assigns and administrators of HVC or such Person, as applicable. Neither HVC nor any of the foregoing Persons shall be denied indemnification in whole or in part because HVC or such Person had an interest in the transaction with respect to which the indemnification applies if the transaction is otherwise permitted by the terms of this Agreement.

13.03 Survival. The provisions of this **Article XIII** shall survive any cancellation, termination or expiration of this Agreement and shall remain in full force and effect until such time as the applicable statute of limitation shall cut off all demands, claims, actions, damages, losses, liabilities or expenses which are the subject of this **Article XIII**.

**ARTICLE XIV
SALE OF THE CASINO**



**ARTICLE XV
MISCELLANEOUS PROVISIONS**

15.01 Manager as Independent Contractor and Agent for HVC. In the performance of its duties as the manager of the Casino, the Manager shall act solely as the agent of HVC. Nothing in this Agreement shall constitute or be construed to create a partnership, joint venture or joint employer relationship between the Manager and HVC, and the Manager shall be an independent contractor of HVC.

15.02 Preparation of Agreement. The parties hereto jointly participated in the negotiation and drafting of this Agreement. The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their collective mutual intent. This Agreement shall be construed as if drafted jointly by the parties hereto, and no rule of strict construction shall be applied against any Person.

15.03 Costs and Expenses. Except as expressly set forth in this Agreement, each party shall pay all legal and other costs and expenses incurred by such party in negotiating this Agreement, in performing any due diligence with respect to the transactions contemplated hereby, in retaining professional advisors in connection with such due diligence work, in performing any of the transactions contemplated by this Agreement, or in complying with such party's covenants, agreements and conditions contained herein.

15.04 Survival. All of the representations and warranties set forth in this Agreement shall survive the execution and delivery of this Agreement.

15.05 Entire Agreement; No Collateral Representations. This Agreement contains the entire agreement, and supersedes all prior agreements and understandings and arrangements, oral or written, between the parties hereto with respect to the subject matter hereof.

15.06 No Oral Modification or Waiver. This Agreement may not be varied, supplemented or contradicted by evidence of prior agreements, or by evidence of subsequent oral agreements. Neither this Agreement nor any of its terms or provisions may be amended, modified, supplemented, augmented, rescinded, discharged or terminated (other than by performance), except by a written instrument signed by all of the parties to this Agreement. None of the terms of this Agreement shall be deemed to have been waived by any party hereto, unless such waiver is in writing and signed by that party. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement or any further breach of the provision so waived.

15.07 Remedies Cumulative. The remedies of each party under this Agreement are cumulative and, except as otherwise herein provided, shall not exclude any other remedies to which such party may be lawfully entitled.

15.08 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be unenforceable or invalid under applicable law, such provision shall be ineffective only to the extent of such unenforceability or invalidity, and the remaining provisions of this Agreement shall continue to be binding and in full force and effect.

15.09 No Third Party Beneficiaries. Nothing contained in this Agreement shall confer any rights or remedies on any person or entity other than the parties hereto and their respective successors and assigns, if any; nor shall anything in this Agreement relieve or discharge the obligation or liability of any third person to any party to this Agreement; nor shall any provision of this Agreement give any third person any right of subrogation or action over or against any party to this Agreement.

15.10 No Reliance on Prior Representation. Each of HVC and the Manager acknowledges and agrees that there are no oral representations or promises which has induced such party to change its position to its detriment, to partially perform, or to part with value in reliance upon such representation or promise.

15.11 Headings. The section and other headings contained in this Agreement are for convenience only and shall not be deemed to limit, characterize or interpret any provisions of this Agreement.

15.12 Applicable Law; Venue. This Agreement and the rights of the parties hereunder shall be construed and interpreted in accordance with the laws of the State of Delaware (without regard to conflict of laws principles). The parties hereby submit to the exclusive jurisdiction of the courts of the State of Delaware and the federal courts of the United States located in the State of Delaware, in respect of any dispute arising from this Agreement or the subject matter thereof. TO THE FULLEST EXTENT UNDER LAW, THE PARTIES HERETO HEREBY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY SUCH ACTION.

15.13 Notices. Unless otherwise specifically provided in this Agreement, all notices and other communications which are required or permitted to be given hereunder, shall be in writing, and shall be delivered personally or by certified mail (return receipt requested), by overnight mail, or by facsimile and addressed to the address set forth below, or to such other address as any party hereto shall have been specified by notice hereunder. Any notice under this Agreement shall be deemed to have been given, (a) if delivered in person or sent by confirmed facsimile or overnight courier, one (1) business day following delivery to recipient, facsimile transmission or delivery to the courier (as the case may be), or (b) if mailed, three (3) business days following deposit in the U.S. mail.

To HVC:

Hudson Valley Casino and Resort, LLC
c/o Newburgh Casino Associates LLC
342 Jefferson Street
Saratoga Springs, New York 12866

With copy to (which shall not constitute notice):

Nolan & Heller, LLP
39 N. Pearl Street
LEGAL_US_E# 110338771.9

To the Manager:

Hudson Valley Gaming, LLC
900 N. Michigan Avenue, Suite 1600
Chicago, Illinois 60611
Facsimile: (312) 915-3053
Attention: Greg Carlin

With copy to (which shall not constitute notice):

Paul Hastings LLP
191 N. Wacker Drive

Albany, New York 12207
Facsimile: (518) 432-3123
Attention: Richard L. Burstein

Chicago, Illinois 60606
Facsimile: (312) 499-6120
Attention: Thaddeus J. Malik

15.14 Assignment and Delegation; Successors and Assigns. The following provisions will govern the assignment by HVC or the Manager of its rights, or the delegation by HVC or the Manager of its duties, provided for in this Agreement.

15.14.1 General Restriction of Assignment. Except as provided in this **Section 15.14**, neither party may assign its rights nor delegate the performance of its obligations under this Agreement. Any purported assignment or delegation in violation of the terms of this Section shall be null and void.

15.14.2 Assignment or Delegation by HVC. HVC shall be entitled to (i) assign its rights and delegate the performance of its duties and obligations under this Agreement to any subsidiary controlled by HVC, to any Affiliate of HVC, or to any third party which acquires all or substantially all its assets of the Casino or a fifty percent (50%) or greater interest in the Membership Interests of HVC, and (ii) to assign or pledge its right to receive the remaining Gross Revenues of the Casino after the application of such Gross Revenues in the manner contemplated in **Section 6.02.3** of this Agreement.

15.14.3 Assignment or Delegation by the Manager. The Manager acknowledges that it has been selected to act as manager of the Casino on account of its personal experience and capability, and, accordingly, the Manager shall not be entitled to delegate performance of its duties and obligations hereunder without the prior written consent of HVC, which consent may be withheld by HVC in its sole and unfettered discretion. Notwithstanding the foregoing, (i) prior to the License Award Date, the Manager may assign and delegate its rights under this Agreement to any of its Affiliates, with the prior written consent of HVC, not to be unreasonably withheld, conditioned or delayed, (ii) the Manager may, so long as it is not then in default, assign and delegate its rights and obligations under this Agreement to any of its Affiliates (including Rush Street Gaming, LLC) or any person or entity that would be a "Permitted Transferee" under the LLC Agreement, provided that such Affiliates or "Permitted Transferee(s)" shall be bound by all of the provisions of this Agreement and provided that the Manager remains liable for performance of all obligations hereunder notwithstanding such assignment, and (iii) the Manager shall have the right to assign or pledge its right to receive the Management Fee pursuant to this Agreement. Any change in the equity ownership of the Manager which results in the Manager or its Affiliates no longer owning at least fifty percent (50%) of the membership equity interests of the Manager or no longer having Control over the Manager shall be deemed an assignment for purpose of this Agreement. Notwithstanding anything to the contrary in this Agreement, the Manager may engage and delegate its obligations to any Affiliate of the Manager to provide third party support services (including Rush Street Gaming LLC and its Affiliates) to the extent HVC is not

charged directly or required to reimburse the Manager for such third party support services and provided that the entity providing the third party support services is bound by the provisions of this Agreement and the Managers continue to be bound by the provisions of this Agreement notwithstanding the expense at the third parties providing those services.

15.14.4 Effect of Assignment or Delegation. Each and every representation, warranty, covenant, condition and provision of this Agreement shall be binding upon and shall inure to the benefit of such party and his, her or its respective successors and permitted assigns, heirs, personal and legal representatives, including without limitation any successor (whether direct or indirect, or by merger, consolidation, conversion, purchase of assets, purchase of securities or otherwise). No assignment or delegation of all or any part of this Agreement shall relieve the assignor or delegator of primary and direct responsibility and liability for the performance by such assignor or delegator of its obligations set forth in this Agreement. In the event of such an assignment or delegation, the assignor or delegator will be jointly and severally liable with the assignee or delegatee for the performance of such obligations, except that in the event of a sale of the Casino under **Article XIV** in which this Agreement is assigned to the purchaser, HVC shall not be liable for amounts payable to the Manager arising from the Manager's performance after the closing date of such sale, or arising from any acts, transactions or occurrences taking place after the closing date.

15.15 Calculating Time Periods. When calculating the period of time within which or following which any act is to be done or step taken pursuant to this Agreement, the date which is the reference day on calculating such period shall be excluded. If the last day of such period is not a business day, the period in question shall end on the next business day.

15.16 Counterparts. This Agreement may be executed in any number of counterparts, and by facsimile or other electronic means, each of which shall be effective only upon delivery and thereafter shall be deemed to be an original, and all of which shall be taken to be one and the same instrument with the same effect as if each of the parties hereto had signed the same signature page.

15.17 Electronically Transmitted Documents. If a copy or counterpart of this Agreement is originally executed and such copy or counterpart is thereafter transmitted electronically by facsimile or similar device, such facsimile document shall for all purposes be treated as if manually signed by the party whose facsimile signature appears.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

HUDSON VALLEY CASINO AND RESORT, LLC

By: 
Name: Gregory A. Carlin
Title: Chief Executive Officer

HUDSON VALLEY GAMING, LLC

By: 
Name: Gregory A. Carlin
Title: Chief Executive Officer

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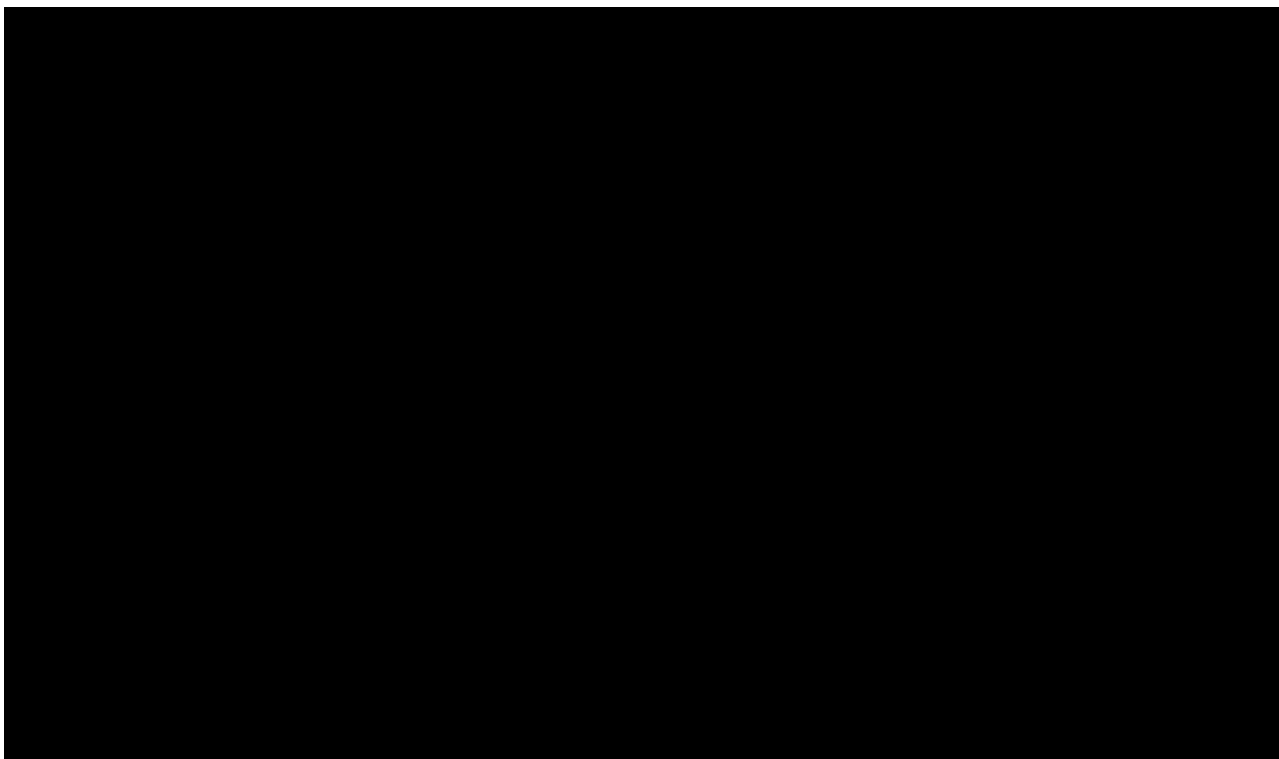
LIST OF EXHIBITS

Exhibit A

Management Fee

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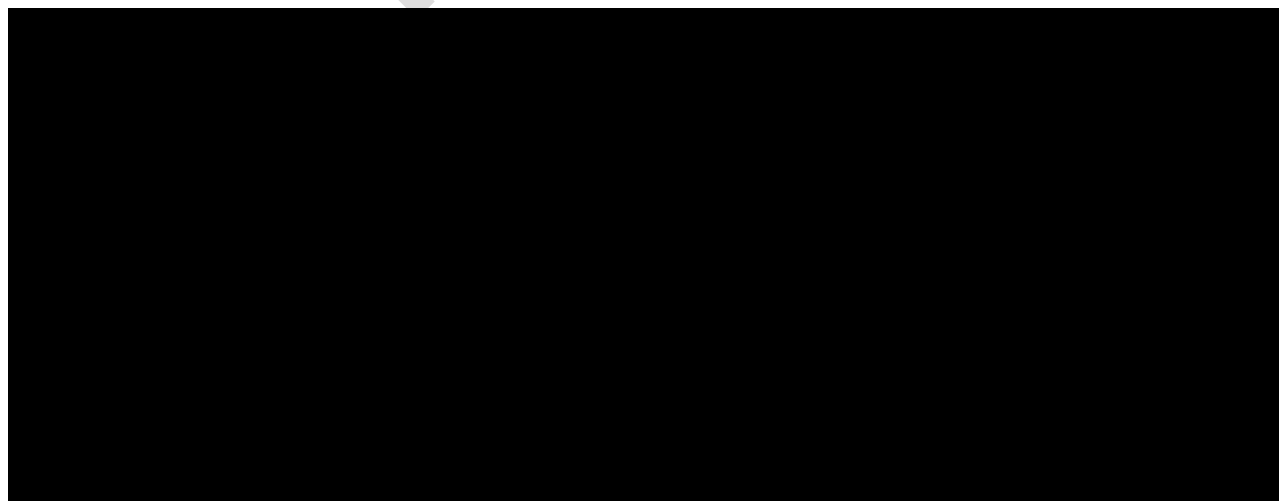
Exhibit A
Management Fee



(c) Certain Definitions.

(i) “Total Revenue” shall mean, for a given period, an amount equal to the total gross revenues derived from the operation of the Casino determined in accordance with GAAP.

(ii) “GAAP” means United States generally accepted accounting principles, as of the date hereof, consistently applied.





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