

## **License Agreement**

This License Agreement (“Agreement”) is made this \_\_\_ day of June 2014, by and between Mohegan Gaming New York, LLC, a Delaware limited liability company (“Licensor”) and Concord Kiamesha Casino LLC, a Delaware limited liability company (“Concord Casino”), Concord Kiamesha Hotel LLC, a Delaware limited liability company (“Concord Hotel” and together with Concord Casino and Concord Hotel, the “Licensee”).

### **Recitals**

A. Licensor is an affiliate of the Mohegan Tribal Gaming Authority (“MTGA”), the operator and exclusive owner of a casino destination resort located in Uncasville, Connecticut, commonly known as Mohegan Sun, containing a complex consisting of a hotel, gaming areas, retail stores, a spa, restaurants and other amenities, and another casino destination resort located in Wilkes Barre, Pennsylvania, commonly known as Mohegan Sun at Pocono Downs; and

B. Licensee and its affiliates intend to design and construct a hotel and casino gaming destination project located in upstate New York (the “Project”), as more fully described in that certain Management Services Agreement dated [June \_\_\_, 2014] (the “Management Agreement”) by and between Licensee and Licensor; and

C. Pursuant to the Management Agreement, Licensor will manage and operate the Project on behalf of Licensee under the trade name Mohegan Sun at The Concord; and

D. MTGA is the owner of all rights in the name “Mohegan Sun” and related trademarks, service marks and brand logos more particularly designated on Exhibit A attached hereto (hereinafter referred to as the “Marks”), which Marks have been used in commerce and extensively advertised and promoted by various means, and which Marks are well known and recognized by the general public and have gained high reputation and goodwill with the general public, which high reputation and goodwill have been and continue to be a unique benefit to MTGA and its affiliates; and

E. Licensor has obtained rights to utilize the Marks in connection with the Project pursuant to that certain Advisory Services Agreement dated [\_\_\_\_\_, 2011] by and between Mohegan Gaming Advisors, LLC, a wholly owned subsidiary of MTGA, and Licensor, and Licensor is authorized and willing to grant Licensee, pursuant to the terms and conditions of this Agreement, a license to use the Marks in connection with the Project; and

F. Licensee desires to obtain the benefits of the Marks and to use the same in connection with the Project, all in accordance with the terms of this Agreement.

### **Agreement**

Now, therefore, in consideration of the mutual covenants, conditions and terms specified herein together with other good and valuable considerations and the incorporation of the above recitals,

the receipt and sufficiency of which are hereby mutually acknowledged, it is understood and agreed by and between the parties hereto as follows:

**Article I**

**Exhibits**

Exhibit A      Exhibit Description Showing Marks

**Article II**

**Term**

**Section 2.1.    License Term and Commencement Date.**

This Agreement shall be effective from the date hereof (“Effective Date”) and continue through the expiration of the Management Agreement, unless earlier terminated or otherwise extended in accordance with the terms of the Management Agreement (the “License Term”). In no event shall Licensee have any option rights or options to extend the term of this License and under no circumstances will any ownership rights in the Marks vest in Licensee.

**Section 2.2.    Rights of Licensee.**

Licensee shall have the non-exclusive rights to use the Marks in accordance with the standards and usage approved by Licensor as set forth herein, provided that Licensee will have exclusive rights to use the name “Mohegan Sun” in combination with the mark “the Concord” in connection with the Project.

**Article III**

**Property and Marks**

**Section 3.1.    Ownership of Marks.**

Licensee acknowledges and agrees that Licensor’s affiliate, MTGA, owns all right, title and interest in and to the Marks (including all goodwill therein and derivatives thereof) and, unless otherwise expressly provided in this Agreement, to any and all causes of action and rights of recovery for violations of or infringements upon any of the Marks. Licensee agrees that all use of the Marks by Licensee shall inure to the benefit of MTGA and Licensee agrees that it shall not directly or indirectly challenge the ownership or other rights of MTGA or Licensor in or to, or the validity or strength of, any of the Marks. Licensee agrees that it will not file any applications for registration, nor make any efforts to acquire applications for registration or registrations, for the Marks or marks that are confusingly similar to the Marks, and it will cooperate fully as

requested by Licensor or MTGA in connection with any registration or maintenance by MTGA of the Marks.

### Section 3.2. License Grant.

Licensor hereby grants to Licensee the limited right, which shall be non-assignable, non-transferrable and non-exclusive except as otherwise provided herein, during the License Term to use the Marks solely for the Licensed Uses (defined below). All rights with respect to the Marks not expressly granted to Licensee hereunder are reserved to MTGA and Licensor, as applicable. As a material part of the inducement of Licensor to enter into this Agreement, Licensee shall use the Marks throughout the Project and throughout the License Term solely for the Licensed Uses in accordance with the standards and other terms set forth in this Agreement.

#### Section 3.2.1. Licensed Uses Defined.

Licensed Uses shall mean the right, subject to the terms of this Agreement, to the use of the Marks in accordance with the Quality Standard set forth in this Agreement and subject to obtaining any approvals required by this Agreement:

(a) In the Project, as part of the name, furnishings, fixtures, decorations, theme, identifying characteristics, and motif thereof; and

(b) In connection with marketing the Project including but not limited to billboards, signs, pylons, internet, social media, print, television, radio and such other methods of advertising and communications as hereinafter developed or discovered as approved by Licensor; and

(c) In connection with the products, services and merchandise sold and/or provided at the Project, subject to the Management Agreement; and

(d) In connection with any potential cross-marketing activities undertaken by the parties pursuant to the terms hereof and subject to any separate agreement between the parties in respect of such cross-marketing activities; and

(e) As otherwise expressly permitted in this Agreement or in writing by Licensor pursuant to the terms hereof.

#### Section 3.2.2. Quality Standard Defined.

Quality Standard means a level of quality consistent with the quality of (as applicable) the fixtures, furnishings, decorations, operations, goods, services and marketing provided by MTGA in and for the areas of the Mohegan Sun hotel, casino, entertainment and retail complex located in Connecticut and at Mohegan Sun at Pocono Downs in Pennsylvania.

### Section 3.3. Quality Control and Trademark and Trade Dress Usage.

Licensee agrees that:

(a) The form, manner, place, method and mode for the use, display or presentation of any of the Marks in connection with any Licensed Use, including but not limited to any Licensed Use on products, menus, billboards, buildings, marketing materials and other advertising, shall be subject to the prior written approval of Licensor, which prior written approval will be responded to in a commercially reasonable time frame and limited to ensuring that the Licensed Use (i) complies with this Agreement and (ii) is consistent with the brand image, reputation and goodwill of the Marks; and

(b) It will use the Marks in accordance with the Project as mutually approved by Licensor and Licensee, as such Marks may be amended or supplemented from time to time by written notification from Licensor to Licensee. Licensee shall, after notice by Licensor of any amendment or supplement to the Marks, comply with any such amendment or supplement within a commercially reasonable time, consistent with Licensee's capital budget for the Project; and

(c) It will not alter any of the Marks except as expressly approved in advance in writing by Licensor in Licensor's sole discretion, and it will not depict any of the Marks in any way that would impair the rights of Licensor or MTGA in the Marks or the goodwill or reputation of Licensor or MTGA; and

(d) It will not (i) create or use any alternate or abridged forms of the Marks, (ii) combine the Marks with other marks, except as may be authorized by this Agreement, (iii) use or display the Marks together with unapproved copy or advertising materials, or (iv) create or use any other marks, trade names, slogans, tag lines, domain names, or other trade indicia, that are derived in whole or in part from the Marks; and

(e) All of its displays and uses of the Marks shall occur only in the manner set forth in this Agreement; and

(f) Each use and reproduction of the Marks shall be accompanied by such trademark or service mark notice, copyright notice or other notice as may be required by law or as reasonably requested by Licensee; and

(g) It will not combine any Mark or a confusingly similar variation of a Mark with a mark owned by Licensee or with any other trademark unless otherwise agreed to by Licensor, nor shall a Mark or confusingly similar variation of a Mark be used as a component of the trade name of Licensee or any of its affiliates or any of its or their Internet domain names. Notwithstanding the foregoing, Licensee and Licensor shall be able to use both Licensee's trademarks and the Marks on the same piece of marketing materials as long as (i) the Marks are distinctive from the other trademarks, (ii) the Marks are not combined as a component of other trademarks, and (iii) the Marks are used in accordance with this Agreement; and

(h) It will not, under any circumstances, use, market, promote, advertise or sponsor a product, service, trademark or brand name of any third party in the Project or in marketing materials for the Project without the prior written approval of Licensor, and it will not enter into

any agreements, including sponsorship agreements, with any third party affording such third party the right to use the Marks or the right to display signage, products or services at the Project without the express written consent of Licensor; and

(i) Unless otherwise specifically provided for in this Agreement or the Management Agreement, Licensee shall be fully responsible for all costs relating to the design, construction, maintenance and operation of the Project. For the avoidance of all doubt, Licensor and Licensee also acknowledge that Licensee shall, at Licensee's cost, alter the design of certain signs or other advertising media to conform to any updating, modernization, or other similar alteration or modification of the Marks with the advice and direction of Licensor within a commercially reasonable time, consistent with Licensee's standard renovation practices and inventory turnover cycles; and

(j) Licensee shall make no material alterations, additions, changes or improvements to any of its uses, displays or presentations of the Marks that were initially subject to Licensor's approval rights hereunder or which will otherwise result in failure of the Project to meet the Quality Standard, without Licensor's prior written consent in its sole discretion. No such alterations, additions, changes or improvements shall proceed without such approval by Licensor of Licensee's designer or contractor (if relevant), of the plans, specifications and drawings and the timing and manner of implementation; and

(k) The Marks and associated signage and advertising shall be prominent and be given no less space than that occupied by any of Licensee's associated signage.

#### Section 3.4. Additional Operating Requirements.

Licensee further agrees and covenants that during the License Term:

(a) Subject to (i) compliance with all applicable laws, (ii) the provisions of this Agreement, and (iii) the Management Agreement, Licensee will operate or cause the Project to be operated consistent with the Quality Standard; and

(b) It will market, advertise and promote the Project in accordance with market practices of other such gaming and race track destination resorts located in New York and elsewhere in the Northeast; and

(c) Upon Licensor's reasonable request from time to time, it will provide Licensor with copies of any written complaints, evaluations or surveys received or conducted by Licensee concerning the quality of the goods and services provided at the Project, and to the extent that such complaints or evaluations reflect customer dissatisfaction, Licensee will consult with Licensor and give due consideration to Licensor's suggestions; and

(d) It will obtain or cause to be obtained all necessary licenses and permits (including all health, premises, regulatory, and alcoholic beverage or liquor licenses or permits) and governmental authorizations necessary or required for all business in the Project.

Section 3.5. Infringement of Marks.

Licensee will promptly notify Licensor in the event it learns of any imitations, infringements or other violation of the Marks or is aware of any application to register marks by others that would conflict with or be confusingly similar to the Marks, and will cooperate fully with Licensor (at the expense of Licensor unless such infringement, violation or application is the result of a violation of this Agreement by Licensee or its affiliates or is a result of the agreement of the parties to use the Marks in connection with Licensee's marks or those of another party, in which events Licensee shall bear such expense) in connection with any litigation, administrative proceedings, or protests which Licensor deems desirable for the protection of or maintenance of rights in the Marks. Licensor shall have the sole authority to make decisions concerning the initiation, prosecution, compromise or settlement of any action that involves imitation, infringement or other violation of the Marks.

**Article IV**

**Representations, Warranties and Covenants**

Section 4.1. Licensee Representations.

Licensee represents and warrants each of the following:

(a) Each Licensee is duly organized, validly existing and in good standing under the laws of the jurisdiction of its respective organization; and

(b) Each Licensee has the right, power and authority to enter into and to perform its obligations under this Agreement and as well as under the Management Agreement, as applicable; and

(c) The agreements contemplated hereunder to which Licensee is or may become a party have been duly authorized by all necessary action on the part of Licensee; and

(d) This Agreement constitutes the legal, valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms; and

(e) Neither (i) the execution and delivery nor (ii) the consummation or performance by Licensee of this Agreement or the Management Agreement will (with or without notice or lapse of time) contravene, conflict with or result in a violation of any legal requirement or order to which Licensee is or becomes bound nor will it contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any contract to which Licensee is a party or by which Licensee is bound; and

(f) Licensee (i) is not and will not be required to make any filing with or give any notice to, or to obtain any consent from, any person in connection with the execution and delivery by Licensee of this Agreement or any of the agreements contemplated hereby or the

consummation or performance by Licensee of any of the transactions contemplated hereby; and (ii) has not taken, or to the knowledge of Licensee, been the subject of any action that could reasonably be expected to have an adverse effect on its ability to comply with or perform any of its covenants or obligations under this Agreement or any of the agreements contemplated hereby; and

(g) There is no pending proceeding against or involving Licensee that challenges or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the transactions contemplated hereunder, and, to the knowledge of Licensee, no person has threatened to commence any such proceeding. There is no order issued by a governmental body against Licensee with respect to the Project. To the knowledge of Licensee, there is no proposed order that, if issued or otherwise put into effect: (a) may have an adverse effect on the ability of Licensee to comply with or perform any covenant or obligation under this Agreement; or (b) may have the effect of preventing, delaying, making illegal or otherwise interfering with any of the transactions contemplated hereby.

#### Section 4.2. Licensor Representations.

Licensor represents and warrants each of the following:

(a) Licensor has the right to license the Marks to Licensee in accordance with the terms of this Agreement. Licensor further represents and warrants that, to Licensor's knowledge, the Marks are valid and that Licensee's use of the Marks in accordance with the terms and conditions of this Agreement does not constitute trademark infringement and will not constitute trademark infringement at any time during the License Term; and

(b) Licensor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization; and

(c) As of the Effective Date, subject to any necessary approvals of any gaming regulatory authority, Licensor has the right, power and authority to enter into and to perform its obligations under this Agreement and each of the agreements contemplated hereunder to which it is or may become a party, and the execution, delivery and performance by Licensor of this Agreement have been duly authorized by all necessary action on the part of Licensor; and

(d) This Agreement constitutes the legal, valid and binding obligation of Licensor, enforceable against Licensor in accordance with its terms; and

(e) There is no pending proceeding against or involving Licensor that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the transactions contemplated hereunder and, to the knowledge of Licensor, no person has threatened to commence any such proceeding. To the knowledge of Licensor, there is no proposed order that, if issued or otherwise put into effect, (i) may have an adverse effect on the ability of Licensor to comply with or perform any covenant or obligation under this Agreement; or (ii) may have the effect of preventing, delaying, making illegal or otherwise interfering with any of the transactions contemplated hereby.

## Article V

### Events of Default

#### Section 5.1. Events of Default by Licensee.

Failure by Licensee to observe or comply with any covenant, agreement or obligation of Licensee contained in this Agreement or in the Management Agreement and the continuation of such failure for a period of thirty (30) days after written notice thereof from Licensor to Licensee specifying the nature of such failure shall constitute Licensee's breach of and default under this Agreement (a "Licensee Default"); provided however, if the nature of the obligation is such that more than 30 days are required for its performance, Licensee shall not be deemed to be in default if it commences the cure within such 30 day period and thereafter diligently prosecutes the same to completion and completes the cure within no more than 90 days following written notice from Licensor.

#### Section 5.2. Remedies Following Events of Default by Licensee.

In the event of a Licensee Default under this Agreement, Licensor shall have the right, but not the obligation, to immediately terminate this Agreement; however, in no event shall such termination constitute a waiver of any rights Licensor may have or remedies available to Licensor under applicable law, including the right to seek equitable relief without the necessity of having to post a bond or proving special damages.

#### Section 5.3. Phase-Out Period for Property.

During the ninety (90) day period after the expiration or earlier termination of this Agreement (the "Phase-Out Period"), Licensee shall, at Licensee's sole cost and expense, have the right to continue to use the Marks to demonstrate that the Project was formerly known as "Mohegan Sun at The Concord" and to phase-in certain names, characters, symbols, designs and likenesses, including but not limited to trademarks, trade names, service marks, brand logos, label designs, product identification, decals, artwork and copyrights of any person or entity who shall become the replacement manager of the Project on behalf of Licensee, or such other person or entity as determined by the Licensee, in Licensee's sole discretion (the "New Brand"), in connection with the advertising, promotion and re-branding of the Project (the "Rebranding Efforts"), provided, that Licensee shall not take any action in connection with such Rebranding Efforts that is likely to have an adverse effect on the brand image, reputation and/or goodwill of the "Mohegan Sun" name. During the Phase-Out Period and as part of the Rebranding Efforts, Licensee shall, at its sole cost and expense, phase out Licensor's Marks from use at and in connection with the Project and to de-identify the Project and any and all collateral material, including advertising, promotions, signage and any other uses, with the Marks. Licensor shall, at Licensee's sole cost and expense, provide commercially reasonable assistance in connection with Licensee's obligation to phase-out the Marks and de-identify the Project with the "Mohegan Sun" name. This Section 5.3 shall survive the expiration or earlier termination of this Agreement.



Section 5.4. Licensors' Property.

Notwithstanding the foregoing, in the event of a termination of this Agreement due to a Licensee Default or natural expiration of this Agreement, Licensor shall have the right to acquire from Licensee any or all of those items of Licensee's property (of any type) that is Mohegan Sun themed at Licensor's sole and absolute discretion. If Licensee originally either purchased the Mohegan Sun themed property from Licensor or any of its affiliates or reimbursed Licensor or any of its affiliates for the themed property, Licensor may, in its sole discretion, purchase such Mohegan Sun themed property from Licensee at the same price Licensee originally paid subject to a depreciation schedule to be mutually agreed upon by the parties.

In addition, in the event of a termination of this Agreement due to a Licensee Default or natural expiration of this Agreement, Licensor shall have the right to acquire from Licensee any or all of those items of Licensee's property that is Mohegan Sun themed non-reusable property for no fee or charge to Licensor except for any delivery charges which shall be at Licensor's expense. Licensee shall deliver or provide Licensor with a reasonable opportunity to remove all such items from the Project before the end of the Phase-Out Period, at Licensor's expense.

Licensee, at Licensee's sole cost and expense, shall store or destroy and shall not use, sell, distribute or allow the use, sale or distribution of any Mohegan Sun themed property or Mohegan Sun themed non-reusable property that Licensor does not choose to purchase or acquire pursuant to this Section 5.4.

All Mohegan Sun themed property and Mohegan Sun themed non-reusable property used at the Project or in connection with the Project provided at Licensor's sole cost and expense without full reimbursement from Licensee (collectively, the "Licensor Property") shall be and remain the property of Licensor. At the expiration or earlier termination of this Agreement, Licensor shall have the right to acquire from Licensee any or all of those items of Licensor Property at Licensor's sole and absolute discretion before the end of the Phase-Out Period.

**Article VI**

**Indemnification**

Section 6.1. Indemnification by Licensee.

Licensee shall indemnify, defend, protect and hold Licensor and its affiliates, and all of their respective managers, members, directors, shareholders, officers and employees (collectively, the "Indemnified Parties") from, against and in respect of any and all actions, suits, claims, proceedings, investigations, audits, demands, assessments, fines, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) ("Claims") occurring, suffered or incurred as a result of any of the following:

- (a) use by Licensee of the Marks in violation of this Agreement; and

(b) the conduct of Licensee's business, or any activity, work, construction or thing done, permitted or suffered by Licensee at the Project or in connection therewith, except to the extent resulting from the gross negligence or willful misconduct of any of the Indemnified Parties; and

(c) any breach by Licensee of its representations or warranties in this Agreement; and

(d) any other act or omission of Licensee or any of its affiliates, officers, shareholders, directors, agents, employees, contractors or licensees in violation of this Agreement; and

(e) any proceeding commenced by any of the Indemnified Parties to enforce their rights under this Section; and

(f) Licensee's violation of, or failure to comply with, this Agreement.

Licensee's indemnification of the Indemnified Parties hereunder shall in all respects survive the expiration or termination of this Agreement.

#### Section 6.2. Indemnification by Licensor.

Licensor shall indemnify Licensee or its affiliates, and all of their respective managers, members, directors, shareholders, officers and employees from, against and in respect of any and all Claims actually incurred by Licensee by reason of any trademark infringement claim that results in the loss of its use of the Marks. The parties acknowledge and agree that Licensor's obligations under this Section 6.2 are subject to the provisions of Section 3.5 hereof and conditioned upon Licensee providing Licensor: (a) prompt written notice of the existence of such Claim; (b) sole control over the defense or settlement of such Claim; and (c) assistance at Licensor's request and sole expense, to the extent reasonably necessary for the defense or settlement of such Claim. If any Claim that Licensor is obligated to defend has occurred or, in Licensor's opinion, is likely to occur, Licensor shall have the right, at its option and expense, to modify or adjust the Marks so that they become non-infringing.

### Article VII

#### Assignment

Licensee may assign this Agreement in connection with a transfer of the Project, provided that the Management Agreement is contemporaneously assigned to the same assignee(s) in accordance with Section 12.02 of the Management Agreement. Except as specifically provided in the preceding sentence, this Agreement may not be assigned by Licensee, and any attempted assignment hereof by Licensee shall be void.

Any Assignment, transfer or disposition by Licensee of this Agreement shall require that the Assignee thereunder assume and be bound by this Agreement for the benefit of Licensor

pursuant to an Assumption Agreement in form and substance reasonably satisfactory to Licensor. In addition, no assignment, transfer or other disposition of this Agreement shall be permitted if, in a good faith opinion of the Licensor, any such assignment, transfer or disposition would jeopardize, restrict, condition, limit or create a right of cancellation of any approval, consent or licensing of the project or any component thereof.

Licensee agrees to notify Licensor in writing at least sixty (60) days prior to any contemplated assignment of this Agreement.

## **Article VIII**

### **Secured Party Rights**

#### **Section 8.1. Right to Pledge.**

Provided Licensee has acted in strict compliance with this Section 8, Licensee may encumber, pledge, or convey its interests in this Agreement by way of a security agreement, a pledge and/or a collateral assignment (collectively, a “Pledge”) to secure the payment of a loan or loans obtained by Licensee and secured by the Project which loan or financing is provided by an Institution or another entity that is approved by Licensor in its reasonable discretion, or the lender(s) which are represented by an Institution acting as trustee or collateral agent (the “Secured Party”). The term “Institution” as used in this Section 8 shall refer to a savings bank, savings and loan association, commercial bank, trust company, credit union, insurance company, real estate investment trust or pension fund and shall also include other lenders which perform functions similar to the foregoing, and which have assets in excess of fifty million dollars (\$50,000,000.00) at the time the Pledge is made.

#### **Section 8.2. Notice of Breaches to Secured Parties.**

In the event Licensor gives written notice to Licensee of a breach of its obligations under this Agreement, Licensor shall forthwith furnish a copy of the notice to each Secured Party that has been identified by written notice to Licensor by Licensee. To facilitate the operation of this Section 8, Licensee shall at all times keep Licensor provided with an up-to-date list of Secured Parties.

#### **Section 8.3. Secured Party May Cure Breach of Licensee.**

In the event that Licensee receives notice from Licensor of a breach by Licensee of any of its obligations under this Agreement, and such breach is not cured by Licensee pursuant to the provisions of this Agreement, Licensor shall not terminate this Agreement in connection with such default if the conditions of this Section 8.3 are met. Nothing to the contrary withstanding, Licensor shall be entitled to avail itself of all other remedies provided to Licensor hereunder and Licensor shall, give notice of the failure to cure on the part of Licensee to the Secured Party at the expiration of the period within which Licensee may cure as set forth in this Agreement (“Licensor’s Notice”). Thereafter, the Secured Party may elect to cure such default by providing

written notice of its intention to cure any such default to Licensor and commencing such cure within thirty (30) days after receipt of the Licensor's Notice. In the event the Secured Party elects to proceed to cure such default, the Secured Party shall complete such cure within sixty (60) days after the date of receipt of the Licensor's Notice; PROVIDED, HOWEVER, if (1) the default cannot reasonably be cured within such sixty (60) day period, (2) the Secured Party materially commences cure of such default within such sixty (60) day period, and (3) after commencing efforts to cure such default, diligently and in good faith pursues same to completion, then such sixty (60) day period shall be extended to a reasonable amount of time (not to exceed one hundred (100) total days from the Licensor's Notice) to cure such default; PROVIDED, FURTHER, if:

(a) the Secured Party shall have commenced to cure and thereafter diligently continues to use its commercially reasonable efforts to cure such default, including, but not limited to, by seeking appointment of a receiver, exercising legal self-help rights, or obtaining access to the property by other commercially reasonable means to cure such default, as a result of the nature of such default, such default is not reasonably susceptible of being cured without the Secured Party obtaining possession of the Project by institution of a foreclosure proceeding (any such default, a "Possessory Default");

(b) unless it is enjoined or stayed, the Secured Party takes steps to acquire or sell Licensee's interest in the Project by foreclosure or other appropriate means and diligently prosecutes the same to completion; and

(c) before the expiration of such sixty (60) day period, the Secured Party provides notice of such Possessory Default to Licensor, an explanation of the efforts undertaken by the Secured Party to cure such default without first instituting foreclosure proceedings and the reasons such efforts failed; then such sixty (60) day cure period shall be extended for such reasonable amount of time (not to exceed six (6) total months from the Licensor's Notice) to obtain possession of the Project and cure such default. If the Secured Party fails to cure such default within such sixty (60) day period (as extended as permitted in the previous sentence, if applicable, Licensor shall be entitled to exercise all rights and remedies for such default as provided herein, including, but not limited to, termination of this Agreement, without the necessity to provide any further notice or cure period whatsoever. The Secured Party shall not be required to continue such foreclosure proceeding after the default has been cured, and if the default shall be cured and the Secured Party shall discontinue such foreclosure proceedings, this Agreement shall continue in full force and effect as if Licensee had timely cured the default under this Agreement.

Except as expressly provided in Section 8.3(c) with respect to extension of the cure periods, the commencement and/or prosecution of foreclosure proceedings shall not be deemed to abate, toll, extend or otherwise modify the cure rights of the Secured Party set forth in this Section 8.3(c).

#### Section 8.4. Rights and Duties of Secured Party.

Unless and until such time as a Secured Party shall have undertaken a foreclosure of its Pledge or security interest pursuant to Section 8.5, Secured Party shall neither be deemed to be Licensee

hereunder nor be obliged to perform or observe any of the covenants, terms or conditions of this Agreement on the part of Licensee to be performed or observed, whether as a result of (i) its having become a Secured Party or (ii) its performance of any of the covenants, terms or conditions on the part of Licensee to be performed or observed under this Agreement. Notwithstanding the foregoing, if a Secured Party exercises its right to cure a breach of this Agreement, such Secured Party shall be subject to the obligation of Licensee to indemnify Licensor as set forth herein, but solely with respect to the activities undertaken by such Secured Party in order to cure the breach.

#### Section 8.5. Foreclosure.

Provided each of the conditions set forth below have been satisfied to the reasonable satisfaction of Licensor, any Secured Party shall have the right and power to exercise its rights under a Pledge and either obtain title to the Project or sell the same (in foreclosure or by other means in lieu thereof) to a Purchaser (as hereinafter defined). In the event that a Secured Party desires to effect a transfer of title to the Project in foreclosure or by deed in lieu thereof, then upon satisfaction of each of the following conditions, the Purchaser, shall become the Licensee and be subject to this Agreement to the same extent as Licensee:

(a) all of Licensee's accrued monetary obligations to Licensor shall have been satisfied and no uncured default of any such obligations shall exist prior to commencement of foreclosure proceedings and at all times from commencement of such foreclosure proceedings until the transfer of the Project;

(b) upon the earlier of the expiration of the applicable cure periods set forth in Section 8.3(c) hereof or the transfer of title to the Project to the Purchaser, no default of any such obligations shall exist;

(c) the Purchaser shall have entered into a written assumption agreement (conditioned upon such Person succeeding to Licensee's interest in this Agreement), in a form reasonably satisfactory to Licensor, assuming and agreeing to perform all of Licensee's obligations under this Agreement as hereinafter provided;

(d) in connection with its foreclosure of the Pledge, the Secured Party shall simultaneously conclude its foreclosure of all or substantially all (subject to Section 8.6 hereof) other collateral securing the loan, including, but not limited to its interest under all mortgages of the Project;

(e) the Secured Party shall reimburse Licensor for all of its costs and expenses incurred in connection with the Pledge and the foreclosure of the Pledge; and

(f) the Purchaser shall have entered into a written assumption agreement, in a form reasonably satisfactory to Licensor, assuming and agreeing to perform all of the owner's obligations under the Management Agreement.

#### Section 8.6. Right to Terminate.

In the event of a foreclosure and subsequent sale or deed-in-lieu of foreclosure to the Secured Party or another Person (the Person (including the Secured Party) so acquiring the Licensee's interest in this Agreement being referred to herein as the "Purchaser"), Licensor shall have the right to terminate this Agreement, after providing written notice to the Purchaser, but not an opportunity to cure, unless all of the conditions in Section 8.5(a) through (f) are met and the Purchaser meets all of the following criteria (any Purchaser meeting all of the following criteria shall be referred to herein as an "Approved Purchaser"):

- (i) the Purchaser has a net worth of at least ten million dollars (\$10,000,000.00);
- (ii) the Purchaser (and its constituent partners, major shareholders (defined as holding at least ten percent (10%) of the voting securities of the Purchaser), senior executive officers and other controlling Persons, if appropriate) has not been convicted of a felony, and no such Person has been refused a gaming license (and not subsequently revoked) or had a gaming license revoked (and not subsequently restored) in any jurisdiction of the United States.

#### Section 8.7. Additional Rights and Obligations.

In the event that a Secured Party obtains title to the Project, such Secured Party may transfer title to the Project and the Licensee's interest in this Agreement.

After delivery from the Secured Party of all documentation reasonably necessary to prove qualification, Licensor shall, within ten (10) business days of a written request from the Secured party, provide written confirmation as to whether a proposed Purchaser qualifies as an Approved Purchaser in accordance with Section 8.6(a).

For the avoidance of doubt, in the event a Secured Party exercises its rights under Section 8.4 to foreclose any Pledge:

(a) upon commencement of foreclosure proceedings by a Secured Party, Licensee hereby releases Licensor of and from any and all Claims against Licensor and its officers, directors, shareholders, and employees, in their corporate and individual capacities, including, without limitation, Claims arising under federal, state and local laws, rules, and ordinances, arising from or related to this Agreement;

(b) Licensee shall remain liable for all of the obligations to Licensor in connection with the Project prior the effective date of the transfer of its interest in this Agreement.

If Licensee requests that Licensor execute an instrument consenting to a Pledge that is permitted under this Section 8, then Licensor shall execute and deliver such an instrument if it is consistent with the terms of this Section 8, does not adversely affect Licensor's rights or obligations under this Section 8 and is reasonably acceptable to Licensor.

#### Section 8.8. New Agreement.

In the event of an election by Licensee under Title 11 U.S.C. Section 365 (as amended or replaced) to reject or terminate this Agreement (each such rejection or termination in bankruptcy being referred to herein a "Rejection"), Licensor shall provide each Secured Party that has been identified by written notice to Licensor by Licensee with a statement of all sums which would at that time be due under this Agreement but for such Rejection, and of all other defaults, if any, then known to Licensor, Licensor agrees to enter into a New Agreement ("New Agreement") with such Secured Party or an Approved Purchaser for the remainder of the term of this Agreement, effective as of the date of Rejection and upon the terms, covenants and conditions (including all options to extend the Term of this Agreement, but excluding requirements which have already been completely fulfilled) of this Agreement, provided:

(a) Such Secured Party or Approved Purchaser shall make written request upon Licensor for such New Agreement within thirty (30) days after later of (A) the date this Agreement is Rejected, and (B) the date such Secured Party or Approved Purchaser acquires the Project and Licensee's interest in this Agreement, if any, by foreclosure, assignment in lieu of foreclosure or other appropriate means; PROVIDED, HOWEVER, THAT in any event such written request must be given within 365 days after the earlier of (x) the Licensor's Notice, and (y) the date upon which Licensee filed (either voluntarily or involuntarily) bankruptcy;

(b) Such Secured Party or the Approved Purchaser, as applicable, shall pay or cause to be paid to Licensor at the time of the executed and delivery of such New Agreement (A) any and all sums which would at the time of execution and delivery thereof be due pursuant to this Agreement but for such Rejection, (B) all reasonable expenses, including reasonable attorney's fees, which Licensor shall have incurred by reason of such Rejection and the execution and delivery of the New Agreement and which have not otherwise been received by Licensor from Licensee or other party in interest under Licensee. In the event of a controversy as to the amount to be paid to Licensor pursuant to this subsection 8.7(b), the payment obligation shall be satisfied if Licensor shall be paid the amount not in controversy, and the Secured Party or the Approved Purchaser, as the case may be, shall agree to pay any additional sum ultimately determined to be due, plus interest at nine percent (9%) per annum and such obligation shall be adequately secured;

(c) Such Secured Party or the Approved Purchaser, as the case may be, shall agree to remedy any of Licensee's defaults of which said Secured Party was notified by Licensor's Notice of Termination and which are reasonably susceptible of being so cured (it being agreed upon by the parties that all monetary defaults shall be deemed reasonably susceptible of being so cured) by Secured Party or the Approved Purchaser, as the case may be;

(d) The New Agreement is executed by the Secured Party or the Approved Purchaser, as the case may be, within ten (10) days after provision by such Person of the written request for the New Agreement; and

(e) The Secured Party or the Approved Purchaser shall have entered into a written assumption agreement, in a form reasonably satisfactory to Licensor, assuming and agreeing to perform all of the owner's obligations under the Management Agreement or shall have entered

into a new management agreement with Licensor on the same terms as the Management Agreement.

At all times after a Licensee Default and prior to entry of such New Agreement with the Secured Party or the Approved Purchaser, as the case may be, Licensor shall have the right to exercise any rights or remedies that it may have in connection with such default, including, but not limited to, any right it may have to cause the use of Marks at the Project to be discontinued.

Notwithstanding anything to the contrary in this Agreement, this Agreement shall terminate upon the termination of the Management Agreement.

## **Article IX**

### **General Provisions**

#### **Section 9.1. Waiver.**

None of the terms of this Agreement, including this Section, or any term, right or remedy hereunder shall be deemed waived unless such waiver is in writing and signed by the party to be charged therewith and in no event by reason of any failure to assert or delay in asserting any such term, right or remedy or similar term, right or remedy hereunder.

#### **Section 9.2. Entire Agreement.**

This Agreement constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof, and this Agreement supersedes any prior understandings, agreements, or undertakings.

#### **Section 9.3. No Partnership.**

The relationship between the parties hereunder is that of independent contractors. Nothing contained herein shall be construed to imply a joint venture, principal or agent relationship, or other joint relationship, and neither party will have the right, power or authority to bind or create any obligation, express or implied, on behalf of the other party.

#### **Section 9.4. Force Majeure.**

If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure material, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other similar reason not the fault of the party delayed in performing work or doing acts required under this Agreement, the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

#### **Section 9.5. Submission of Agreement.**



Submission of this Agreement to Licensee does not constitute an offer to license the Marks; this Agreement shall become effective only upon execution and delivery thereof by Licensor and Licensee. The Effective Date of this Agreement shall be the effective date of the Management Agreement.

Section 9.6. Notices.

Any and all written notices required by this Agreement shall be hand-delivered; mailed, certified mail, return receipt requested; or sent via commercial courier, addressed as follows:

TO LICENSOR: Mohegan Gaming New York, LLC  
One Mohegan Sun Boulevard  
Uncasville, Connecticut 06382  
Attention: Chief Executive Officer  
Attention: President

with copy to: Mohegan Gaming New York, LLC  
One Mohegan Sun Boulevard  
Uncasville, Connecticut 06382  
Attention: David Rome, Esq.

TO LICENSEE: Concord Kiamesha Casino LLC  
115 Stevens Avenue  
Valhalla, New York 10595  
Attention: Louis R. Cappelli

with a copy to: DelBello Donnellan Weingarten  
Wise & Wiederkehr, LLP  
One North Lexington Avenue  
White Plains, New York 10601  
Attention: Alfred E. Donnellan, Esq.

All hand-delivered notices shall be deemed delivered as of the date actually delivered. All notices mailed shall be deemed delivered as of three (3) business days after the date postmarked. All notices sent via commercial courier shall be deemed delivered as of the business day immediately following the date the notice is entrusted to the commercial courier service with directions for service within one (1) day. Any changes in any of the addresses listed herein shall be made by notice as provided in this Section.

All requests for approvals by Licensor under this Agreement shall be sent to the attention of, and may be granted on behalf of Licensor by, its President or his designee.

Section 9.7. Captions and Section Numbers.

This Agreement shall be construed without reference to titles of Articles and Sections, which are inserted only for convenience of reference.

Section 9.8. Number and Gender.

The use herein of a singular term shall include the plural and use of the masculine, feminine or neuter genders shall include all others.

Section 9.9. Joint and Several Liability.

If Licensee is comprised of more than one person or entity or is a partnership or other business organization the members of which are subject to personal liability, the liability of each such member shall be deemed to be joint and several.

Section 9.10. Partial Invalidity.

If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances necessary to reflect the intent of the parties shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 9.11. Applicable Law.

This Agreement shall be governed by and construed under the laws of the State of New York in effect on the date of the execution of this Agreement. The parties hereto hereby irrevocably submit themselves to the exclusive jurisdiction of the state and federal courts sitting in, or having jurisdiction over, the State of New York, waive any argument that such courts are an inconvenient forum and agree and consent that services of process may be made upon any party in any legal proceedings relating hereto by any means allowed under state or federal law.

Section 9.12. Confidentiality; Press Releases.

Licensor and Licensee agree to keep the terms and conditions of this Agreement and any other information of a confidential nature provided to it by the other party confidential and shall require their agents, employees, officers, directors, members, partners and representatives to keep such terms, conditions and other information confidential, except (a) that Licensor may disclose the terms of this Agreement to its advisers, lenders, potential lenders or potential purchasers, and (b) as may be required by law or by a court of competent jurisdiction.

All press releases, public announcements and related activities in connection with this Agreement shall be prepared jointly and mutually approved in writing by Licensor and Licensee. Neither Licensor nor Licensee shall make any public statement (written or verbal) regarding this Agreement or the terms contained herein without the prior written consent of the other party.

Section 9.13. No Presumption.

Licensor and Licensee agree and acknowledge that this Agreement has been freely negotiated by Licensor and Licensee. In any disagreement over the interpretation, validity or enforceability of this Agreement or any of its terms or conditions, this Agreement will be construed without inference or presumption whatsoever against either party, including any presumption by virtue of one party having drafted this Agreement.

Section 9.14. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute and be construed as one and the same instrument.

Section 9.15. Incorporation of Exhibits.

All Exhibits referenced in this Agreement (or that are executed concurrently herewith and attached hereto and refer to this Agreement) are incorporated herein by reference.

IN WITNESS WHEREOF, Licensor and Licensee have signed this Agreement as of the day and year first above written.

Licensor:

Mohegan Gaming New York, LLC

By: \_\_\_\_\_  
Name:  
Title:

Licensee:

Concord Kiamesha Casino LLC  
By: Concord Kiamesha LLC, its Sole Member  
By: BKC Casino Group LLC, its Manager

By: \_\_\_\_\_  
Name: Louis R. Cappelli  
Title: Manager

Concord Kiamesha Hotel LLC  
By: Concord Kiamesha LLC, its Sole Member  
By: BKC Casino Group LLC, its Manager

By: \_\_\_\_\_  
Name: Louis R. Cappelli  
Title: Manager

**EXHIBIT A**

MARKS