

MANAGEMENT SERVICES AGREEMENT

THIS MANAGEMENT SERVICES AGREEMENT (this “*Agreement*”) is made and entered into as of June ___, 2014 by and between CONCORD KIAMESHA CASINO LLC, a Delaware limited liability company (“*Owner*”) and MOHEGAN GAMING NEW YORK, LLC, a Delaware limited liability company (“*Operator*”), with an address at One Mohegan Sun Boulevard, Uncasville, Connecticut 06382. Certain capitalized terms used herein are defined in Exhibit A attached hereto.

WITNESSETH:

WHEREAS, Owner and its affiliates are intending to design and construct the Gaming Facilities, Hotel, meeting rooms, ball rooms, a structured parking garage, valet parking and surface parking and associated facilities described as “Phase I” of the project described in the Plans and Specifications and Capital Budget (the “*Project*”) on the Property;

WHEREAS, Operator and its affiliates have experience in hotel, casino and management and the ability to manage and operate the Project on behalf of Owner; and

WHEREAS, Owner desires for Operator to manage and operate the Project on behalf of Owner, and Operator is willing to manage and operate the Project on behalf of Owner, all in accordance with the terms and pursuant to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises, representations, warranties, understandings, undertakings and covenants herein contained, and intending to be legally bound thereby, Owner and Operator hereby covenant and agree as follows:

ARTICLE 1 APPOINTMENT OF OPERATOR

Owner hereby appoints and employs Operator, and Operator agrees, to act as Owner’s sole and exclusive agent for the supervision, direction and management of the Project on the Owner’s behalf, upon the terms and conditions hereinafter set forth for a term commencing as of the date hereof (the “*Commencement Date*”) and continuing through the date that is Thirty (30) years from the Completion Date (the “*Term*”). Upon expiration of the Term or any early termination as provided herein, Owner shall forthwith pay to Operator any and all fees and other amounts due to Operator pursuant to this Agreement.

ARTICLE 2 PRE-OPENING PROGRAM

2.01 Operator’s Pre-Opening Services. Owner hereby warrants and represents that it is presently applying to the New York Gaming Commission for a casino license (the “Gaming License”) necessary for the development of the Project. If Owner obtains the Gaming License then the development and construction of the Project during the Term prior to the Completion Date, Operator shall perform the following pre-opening services for Owner:

- (a) Pre-opening office setup, together with assistance in preparing a pre-opening plan to be approved in advance by Owner;
- (b) Hiring of personnel in accordance with the provisions of this Agreement;
- (c) Coordination of initial inventory purchases;
- (d) Establishment of operating policies and procedures for the Project;
- (e) Establishment of security systems for assets, personnel and patrons;
- (f) Establishment of accounting and internal control systems and procedures;
- (g) Establishment of risk management policies and procedures;
- (h) Training of all staff;
- (i) Assistance with licensing;
- (j) Coordinate with the Division of the Lottery of the State of New York on selection of Video Lottery Terminals for the Gaming Facilities; and
- (k) Such other customary pre-opening services that shall be reasonably requested by Owner and consented to by Operator, such consent not to be unreasonably withheld, conditioned or delayed.

2.02 Title to the Project. Owner covenants and agrees that from and after substantial completion of the Project, it will have and it will maintain in full force and effect, and cause its subsidiaries to have and maintain in full force and effect, all Licenses required by any Agency for Owner to conduct its business by any Agency and any other Licenses and Permits necessary or desirable for ownership and operation of the Project. In addition, throughout the Term of this Agreement, Owner shall have and maintain in full force and effect:

- (a) full ownership of and fee or leasehold title, as applicable, to the Property and to the improvements of the Project, subject to mortgages, leases or other encumbrances created by Owner as of the date hereof in accordance with the Financing Documents and certain agreements to be entered into between Owner and the Sullivan County Industrial Development Agency; and
- (b) full control of the FF&E located on the Property, free and clear of any liens, encumbrances, covenants, charges, burdens or claims, except (i) such as do not materially and adversely affect the use thereof by Operator; (ii) mortgages or other encumbrances related to the financing of the Project and the FF&E Financing; and (iii) leases of personal property and equipment. This Agreement shall not be subject to forfeiture or termination under any financing documents relating to the Project, except in accordance with the provisions of any of the Financing Documents, but subject to the provisions of Section 2.03 below. Owner further covenants and agrees to pay and discharge in a timely manner any ground rents, any other rental payments, concession charges or any other charges payable by Owner in respect of the

Project, and, at its own expense, to undertake and prosecute all appropriate actions, judicial or otherwise, to facilitate the quiet and peaceable operation of the Project by Operator. Owner also agrees to pay, prior to delinquency, all taxes and assessments of whatever type which may become a lien on the Project and which may be due and payable during the Term, unless (i) payment thereof is in good faith being contested by Owner, (ii) enforcement of any purported lien is stayed by a court of competent jurisdiction, (iii) the lien has no adverse effect on the business or operations of the Project, and (iv) Owner maintains adequate reserves in a separate account with a reputable financial institution.

2.03 Non-Disturbance Agreements.

(a) Within sixty (60) days from the closing of construction financing for the Project, Owner shall deliver to Operator (and Operator may record in the local real estate records) a non-disturbance agreement for the benefit of Operator from each of Owner's existing secured lenders pursuant to which Operator's rights under this Agreement will not be disturbed as a result of a loan default which does not arise from a breach by Operator that would entitle Owner to terminate this Agreement, and Operator agrees to attorn to any secured lender, bondholder, or agent or collateral trustee on behalf of same, that acquires title to the Property as a result of a foreclosure, deed in lieu of foreclosure or other exercise of remedies under any Financing Documents following a default by the borrower thereunder.

(b) Furthermore, Owner agrees that, prior to obtaining any secured financing or conveying fee title to all or a portion of the Property and entering into a ground lease (as lessee) in connection with the Project other than any conveyance of fee title and execution of any ground lease(s) with the Sullivan County Industrial Development Agency in connection with obtaining certain tax benefits, it will obtain from each prospective lender or ground lessor (and Operator may record in the local real estate records) a non-disturbance agreement for the benefit of Operator pursuant to which Operator's rights under this Agreement will not be disturbed as a result of a loan or ground lease default which does not arise from a breach by Operator that would entitle Owner to terminate this Agreement. If Owner desires to obtain any such secured financing or ground lease for the Project or any portion thereof, on written request from Owner, Operator shall assist in expediting the preparation of an agreement between the prospective lender (or ground lessor) and Operator which will implement the provisions of this Section 2.03.

(c) For purposes of this Agreement, a non-disturbance agreement means an agreement, in form and substance reasonably satisfactory to Operator and in recordable form in the jurisdiction in which the Property is located, executed and delivered by a lender of secured financing for the Project or ground lessor (which agreement shall by its terms be binding upon all assignees of such lender or ground lessor and upon any individual or entity that acquires title to or possession of the Property at or through a foreclosure (referred to as a "Subsequent Owner")), for the benefit of Operator, pursuant to which, in the event such lender or ground lessor (or its assignee) or any Subsequent Owner comes into possession of or acquires title to the Property either at or following a foreclosure, such lender or ground lessor (and its assignees) and all Subsequent Owners shall: (x) recognize Operator's rights under this Agreement; (y) shall not name Operator (in its capacity as manager of the Project under this Agreement) as a party in any foreclosure action or proceeding; and (z) shall not disturb

Operator in its right to continue to manage the Project pursuant to this Agreement; provided, however, that at such time: (i) this Agreement has not expired or otherwise been earlier terminated in accordance with its terms; and (ii) no material event has occurred and no material condition exists which, after notice or the passage of time or both, would entitle Owner to terminate this Agreement. Notwithstanding anything to the contrary herein, upon Operator's request Owner shall execute and Operator shall have the right to record a memorandum of agreement in the land records of Sullivan County, New York referencing Operator's rights under this Section 2.03.

ARTICLE 3
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 OPERATOR:

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

with copy to:

Mohegan Tribe of Indians of Connecticut
5 Crow Hill Road
Uncasville, CT 06382
Attention: Attorney General

TO OWNER:

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 Article 3.

ARTICLE 4
OPERATION

4.01 Standards; Authority.

(a) With respect to the operation of the Project pursuant to this and every other applicable Section of this Agreement, Operator shall manage the Project in a manner consistent with the standards and procedures exercised by Operator and its subsidiaries and affiliates in the management of any other casinos, harness racetracks and hotels owned and operated by affiliates of Operator of the same or similar type, class and quality as the Project, as such standards and procedures may be reasonably modified or revised by Operator from time to time, but no less than the quality standard under the License Agreement. For the purpose of this Section 4.01(a)(i), if Operator is no longer in the gaming business, the standard shall be the comparable standard utilized when Operator was in the gaming business with necessary adjustments for any then-current market factors.

(b) In order for Operator to meet the aforementioned standards and procedures in a professional manner, and to endeavor to comply with any legal requirements affecting the Project, Owner hereby agrees that, commencing on the Completion Date and continuing until the expiration of the Term of this Agreement, (i) Operator shall have exclusive control and authority over the day-to-day management and operation of the Project, and (ii) Owner will not interfere in any material way or involve itself with the day-to-day management or operation of the Project. Examples of the matters which Operator in its reasonable and exclusive discretion shall determine from time to time hereunder include, but shall not be limited to, the following with respect to the Project or any component thereof: vendors and service providers; rates; décor; design; pricing or anything that could be construed as pricing; charges to guests for services performed by Operator at the Project; the issuance of credit to guests and other like decisions; the granting of complementaries and other like decisions; the terms of admittance to the Project for purposes of entertainment; hiring of employees; the labor policies and agreements pertaining to the Project; policies and programs with respect to dining, retail, conference/convention, and entertainment venues at the Project; operation of the Gaming Facilities and the Racetrack and other components of the Project in accordance in all material respects with applicable rules and regulations; the type and character of sales, marketing, advertising, publicity and promotion programs and policies; purchasing; and food and beverage policies. Operator shall have the exclusive authority, on behalf of Owner, to collect all revenues and pay all operating expenses with respect to the Project. In addition, the name of the Hotel, Gaming Facilities and other components of the Project, and any modifications thereto, shall be subject to Operator's approval, which approval shall not be unreasonably withheld or delayed.

4.02 Permits. Owner, with the assistance of Operator, shall obtain and maintain in full force and effect all necessary Licenses and Permits as may be required for the operation of the Project by Operator including, without limitation, Gaming Facilities, Racetrack, Hotel, liquor, bar, restaurant, and sign licenses. All Licenses and Permits are to be in effect as of the Completion Date. Operator shall use reasonable efforts to comply in all material respects with any and all conditions set out in any such Licenses and Permits, subject to any necessary funds being made available by Owner.

4.03 Personnel.

(a) Except as otherwise expressly agreed to in writing by Owner and Operator, all personnel of the Project shall be employees of Owner and all compensation and other benefits to be paid to such employees shall be paid by Operator on Owner's behalf to such employees from funds provided by Owner and deposited by Owner in Project bank accounts. Operator shall have the sole and absolute discretion to hire, supervise, direct the work of, discharge and determine the compensation and other benefits of all employees working in the Project. Owner shall not interfere with or give orders or instructions to employees employed at the Project. Operator, in its sole and absolute discretion, shall determine the fitness and qualification of such employees.

(b) Owner shall pay monthly to Operator all budgeted expenses incurred by Operator's corporate employees, and those of subsidiaries and Operator's affiliated entities, prior to and after the Project is opened to the public as the same are incurred in the performance of duties imposed under this Agreement and any other similar agreement solely for the benefit of the Project in accordance with each Capital Budget and Operating Budget. Operator shall have the right, which right shall not be unreasonably exercised, to determine the advisability of such travel.

(c) Operator shall, as agent for Owner and at Owner's sole expense, employ third-party professionals, consultants and vendors to perform services for the Project related to the operation, maintenance and/or protection of the Project, such as engineers, accountants, attorneys and the like, provided that any such arrangements or agreements that are material to the Project shall be subject to the prior written approval of Owner, which approval shall not be unreasonably withheld or delayed.

4.04 Sales and Promotions.

(a) Operator, in its reasonable discretion, shall cause the Project to participate in sales and promotional campaigns and, as appropriate, activities involving complimentary items to, for example, the Hotel and Gaming Facilities, to patrons, travel agents, tourist officials and airline representatives and other travel, gaming and/or hospitality industry representatives. Operator shall have the reasonable ability to entitle certain executive and marketing personnel employed by Owner and Operator to grant complimentary items with respect to the Hotel and Gaming Facilities when the same is customary in the travel, hospitality or gaming industry or in Operator's standard practice or policy.

(b) Operator shall, as agent for Owner, establish at its sole discretion certain standards relating to the granting or extension of credit to gaming customers, to the extent now or hereafter authorized under applicable laws and regulations.

(c) Operator, on behalf of Owner, shall institute and supervise a sales and marketing program for the Project and shall coordinate and cooperate with the local and national sales and marketing programs of Operator and its affiliated entities and shall also coordinate with tour programs marketed by airlines, travel agents and government tourist

departments when Operator determines such programs are in the best interest of Owner and the Project.

4.05 Maintenance and Capital Replacement.

(a) Owner recognizes the necessity of a program of maintenance expenses for the Project, including the need to cause the Project to continue to be furnished, equipped and maintained in accordance with the standards described herein. Both parties recognize that the maintenance expenses for the Project shall be reflected in the Operating Budget and that an adequate reserve shall be established and updated from time to time as appropriate in the Operating Budget for the maintenance expenses for the Project, it being understood that the amount of such reserve must always be sufficient to meet standards established by the Operator in good faith, and shall be sufficient to satisfy any reserve requirements under any Financing Documents.

(b) Operator, as agent of Owner, is authorized to make and enter into such agreements as are in Operator's reasonable opinion necessary for the operation, supply and maintenance of the Project as required by this Agreement and consistent with the Operating Budget. Notwithstanding the foregoing, Operator agrees to use its commercially reasonable efforts to enter into agreements for the provision of goods and/or services to the Project at the fair market value of the goods and/or services provided or rendered. Notwithstanding the foregoing, Owner (and not Operator) shall undertake and shall oversee and be solely responsible for making all major capital improvements relating to the Project or otherwise undertaken on the Property as may be reflected in any Project Capital Budget approved by the Owner from time to time, and all major, non-routine repairs, renovations and/or alterations that shall necessary or advisable in Owner's reasonable discretion.

(c) Operator shall have the right, consistent with the Operating Budget, to make alterations, additions or improvements in or to the Project to the extent reasonably required to keep the property in satisfactory maintenance and repair (the "**Improvements**"), provided that Operator shall use its commercially reasonable efforts to consult, in advance, with Owner with respect to such Improvements and Owner shall make all funds available to Operator to perform such Improvements.

(d) In the event that, at any time during the Term of this Agreement, repairs or additions to or changes in the Project shall be required by reason of any laws, ordinances, rules or regulations now or hereafter in force, or by proper and lawful order of any governmental or municipal power, department, agency, authority, or officer, such repairs or changes shall be made at the discretion of Operator and at Owner's sole expense, without the prior approval of Owner; provided that Operator shall use its commercially reasonable efforts to consult, in advance, with Owner with respect to such changes, additions or repairs and Owner shall make all funds available to Operator to perform such repairs or additions.

(e) Upon the failure of Owner to furnish the funds required for Operator to properly manage the Project as contemplated herein, Operator shall have the right in its sole discretion, but not the obligation, to either (1) advance the necessary funds to Owner as a loan, which loan will bear interest at an annual rate equal to the then applicable Prime Rate (as indicated in the

Wall Street Journal), or (2) terminate this Agreement and exercise any available rights and remedies in respect of such default by Owner. In the event Operator elects to exercise its rights under clause (1) of the preceding sentence, Owner will, if requested by Operator, promptly execute and deliver a negotiable promissory note in form and substance satisfactory to Operator evidencing such obligation.

4.06 Accounting Services.

(a) Operator, at Owner's sole cost and expense, shall maintain a customary accounting system in connection with the management of the Project. The books and records shall be kept in accordance with generally accepted accounting principles ("**GAAP**") that are in effect as of the date hereof or as may be amended from time to time, consistently applied, as applied by Operator or its subsidiaries or Operator's affiliated entities in other gaming operations similar to the Project and as approved by the Owner, which approval shall not unreasonably be withheld. Books and accounts shall be maintained at the Project. Title to such books and accounts shall vest jointly in Owner and Operator, while possession of such books and records shall vest solely in Operator; provided, however, that upon proper termination of this Agreement and proper and timely payment to Operator of all sums due to or accrued for the benefit of Operator under this Agreement, title to and possession of such books and accounts shall vest in Owner. In addition to receiving all Project reports that Owner reasonably requests and that are reasonably requested in the ordinary course of business, Owner shall have the right and privilege of examining and copying said books and records at any reasonable time during regular business hours.

(b) Operator and Owner shall each cooperate with the other party in the preparation of the annual and quarterly reports that are to be provided to the members of Concord Kiamesha LLC in accordance with the that certain Operating Agreement of Concord Kiamesha LLC of even date herewith by and among BKC Casino Group LLC, Marnell Concord LLC, Mohegan Resorts New York, LLC, (as amended, modified or supplemented from time to time, the "**Operating Agreement**").

4.07 Bank Accounts.

(a) Operator shall establish at one or more reputable financial institutions reasonably approved by Owner such Project bank accounts as Operator deems necessary for the operation of the Project. The accounts shall be styled "name of Project-type of account" (e.g., operations, payroll), and all bank accounts shall provide that Operator's designees shall be the only parties authorized to draw upon said accounts. At least thirty (30) days prior to the Completion Date, Owner shall deposit into a Project operating account designated by Operator, an amount (as reasonably determined by Operator and Owner in good faith) to serve as a minimum bank account to use as the Project's initial operating capital in accordance with the approved Operating Budget. After the Completion Date, Operator shall deposit, not less frequently than monthly, any cash on hand in excess of its reasonably anticipated operating and capital needs for the next sixty (60) days and of any reserves required hereunder or under the Financing Documents in such bank accounts or other depositories as may be designated by Owner; provided, that if the Operator determines in its reasonable discretion that additional reserves shall be required for the Project to fund reasonably anticipated operating and capital

needs of the Project or to maintain sufficient liquidity, then Operator shall provide written notice to the Owner indicating that such additional reserves shall be required and setting forth its good faith basis for such determination, and upon the provision of such notice to the Owner, Operator shall have the right to reserve such additional funds as Operator in good faith determines shall be reasonably necessary to cover such operating and capital needs or to maintain sufficient liquidity, such additional reserves not to exceed the reasonably anticipated operating and capital needs or liquidity needs of the Project for sixty (60) additional days. It is understood that Operator shall maintain funds at the Project and shall make payments therefrom as the same are usually and customarily made in the gaming, racing and hotel industries, subject to such funds being made available by Owner. It is further expressly agreed that Owner shall make available to Operator all funds reasonably required for the continued operation of the Project pursuant to the standards set forth in Section 4.01 of this Agreement and in accordance with the Operating Budget to the extent that the funds on deposit in Project bank accounts are not sufficient to meet the capital needs of the Project.

(b) During the Term hereof, Owner shall furnish to Operator true and correct copies of all property tax statements and insurance policies relating to the Project. Without in any way diminishing Owner's responsibility hereunder, Operator shall be authorized to pay from the Project bank accounts the amounts indicated by said statements and/or documents, provided sufficient funds are in such Project accounts.

4.08 Leases and Concessions. Operator shall have the exclusive right and authority to consummate, in the name of and for the benefit of Owner, arrangements and leases with concessioners, licensees, tenants and other users of any commercial space at the Project, at then-prevailing commercially reasonable rates, except to the extent that any of the foregoing shall have a term of more than one year or call for payment or receipt by Owner or its subsidiaries over the term of the agreement of more than \$1 million, in which event such matters shall be subject to the prior written approval of Owner, which approval shall not be unreasonably withheld or delayed.

4.09 Expenses.

(a) All costs, operating expenses, funding of operating deficits and working capital, management fees, reimbursable expenses incurred by Operator, and all other obligations and liabilities of or pertaining to the Project hereunder ("***Owner's Financial Obligations***") shall be the sole and exclusive responsibility and obligation of Owner, and shall be paid promptly by Owner. It is understood that statements herein indicating that Operator shall "furnish," "provide" or otherwise supply, present or contribute items or services hereunder shall not be interpreted or construed to mean that Operator is liable or responsible to fund or pay for such items or services.

(b) It is understood and agreed that Operator shall have no obligation or duty to fund and/or pay for any of Owner's Financial Obligations.

4.10 Budgets.

(a) Operator shall prepare and submit to Owner on or before December 1st of each calendar year a proposed Operating Budget and Project Capital Budget for Owner's approval, which approval shall not be unreasonably withheld or delayed. In the event that Owner does not approve any Budget submitted to it pursuant to this Section 4.10(a) within twenty (20) days of Owner's receipt thereof, Owner shall notify Operator of its failure to approve such Budget and shall set forth the basis on which such approval was denied. Within fifteen (15) days of Operator's receipt of such notice from Owner, Operator shall prepare and submit to Owner a revised proposed Budget for approval and, if such revised proposed Budget is not approved, the procedure set forth above shall continue until a proposed Budget prepared and submitted by Operator to Owner is approved. Any approved Budget shall be the effective Budget for the period in question. In the event that a Budget is not approved by the commencement of the next calendar year, then the Budget for the prior year shall remain in effect for the succeeding year, until such time as a Budget is approved.

(b) Operator shall in good faith attempt to comply in all material respects with the Budgets to the extent that such expenditures are within Operator's reasonable control.

(c) With respect to any deficits which may arise as a result of operations hereunder, Owner shall be obligated to promptly fund and pay such deficits which are not covered by Project income. If Owner fails or delays in furnishing funds to cover deficits as aforesaid (by failure to approve or delay in approving any aspect of the Budgets in a timely manner or otherwise), Operator shall have no responsibility or liability therefor unless such deficit(s) shall be a result of Operator's gross negligence or wilful misconduct.

4.11 Delivery of Notices. Operator shall promptly deliver to Owner any written citation, notification or other written communication from any regulatory entity that alleges or relates to any material violation or alleged violation of any applicable law, rule or regulation with respect to the Project or Operator's operation thereof.

ARTICLE 5 **MANAGEMENT FEE**

5.01 Management Fee. Owner and Operator acknowledge and agree that in consideration of Operator's performance of the services set forth in Section 2.01 of this Agreement on behalf of Owner, Owner shall pay to Operator [REDACTED] commencing on the Commencement Date and until the day immediately prior to the Completion Date (the "*Pre-Opening Payment*"). The Pre-Opening Payment shall be prorated for any partial month and shall be payable to Operator in arrears on the one (1) year anniversary of the Commencement Date. The parties agree that the Pre-Opening Payment shall fully compensate Operator for Operator's costs and expenses in connection with its performance of the pre-opening services set forth in Section 2.01, including but not limited to the cost of Operator's personnel, and that no additional amounts shall be due and owing by Owner to Operator on account of such pre-opening services. In addition, Owner and Operator acknowledge and agree that in consideration of Operator's performance of the other services provided herein on behalf of Owner in accordance with this Agreement, for each calendar year of

the Term or portion thereof, Owner shall pay to Operator an amount equal to [REDACTED] of the Net Revenues for such calendar year or portion thereof (the “*Base Fee*”), and (b) [REDACTED] for such calendar year or portion thereof (the “*Incentive Fee*”, and together with the Base Fee, the “*Management Fee*”). The Base Fee shall be payable in arrears in monthly installments based each month upon the actual Net Revenues for the prior month. The Incentive Fee shall be payable semi-annually in arrears as soon as practicable after the end of the applicable semi-annual period, but, for so long as the Project Financing shall be outstanding, no earlier than thirty (30) days after the date that the Owner is required to make a semi-annual payment pursuant to the Project Loan Documents, subject to adjustment at the end of each calendar year based upon the determination of EBITDAM set forth in the audited financial statements of Owner, and prorated for any period of less than one calendar year.

For purposes of this Agreement, “*Net Revenues*” shall be determined in accordance with GAAP to mean any and all revenues, receipts and income of any kind generated or derived directly or indirectly by the Project and actually received by Owner (including by Operator for the benefit of Owner), including, without limitation, all revenues and proceeds (i) generated from gaming and racing operations, the Hotel, the meeting rooms, ballrooms and similar facilities, any retail and dining facilities, any entertainment facilities, and other facilities, operations and amenities that are part of the Project and (ii) from business interruption or other loss of income insurance actually received by Owner or Operator, less promotional allowances, provided that Net Revenues shall not include the items set forth below:

- (a) Any gratuities, or service charges added to a customer’s bill or statement in lieu of gratuities, which are payable to Project employees;
- (b) An amount equal to all credits or refunds made to customers, guests or patrons;
- (c) All sums and credits received in settlement of claims for loss of or damage to FF&E or loss of or damage to the physical plant of the Project, and all proceeds or payments under insurance policies (except proceeds of business interruption insurance covering all or any portion of the Project actually received by Owner or Operator) and condemnation proceeds or sales proceeds in lieu of and/or under threat of condemnation;
- (d) The proceeds received as a result of any financing (including the Project Financing), any loan proceeds and any and all income from the financing, sale or other disposition of FF&E and any capital assets;
- (e) Any compensation payments for claims against third parties arising out of or during the course of the operation of the Project, unless such claims are for unpaid rent or other income items;
- (f) Any funds furnished by any member of Owner;
- (g) Interest accrued on any reserves established by the Operator or the manager of Owner;

(h) Excise, sale and use taxes collected directly from patrons and guests or as part of the sale price of any goods, services or displays (such as gross receipts, admissions, cabaret or other similar or equivalent taxes) and paid over to federal, state or municipal governments;

(i) Any security deposits received from tenants of all or any portion of the Project, unless and until the same are applied to rent or other obligations in accordance with the tenant's lease;

(j) Any gain arising from any write-up of assets;

(k) Any unusual or extraordinary items; and

(l) Investment income.

For purposes of this Agreement, "**EBITDAM**" shall equal Net Revenues, minus all Project operating expenses calculated in accordance with GAAP (including, without limitation, rent under operating leases of FF&E), minus the amount of any governmental credit received with respect to marketing, Brownfield Tax Credits and capital expenditures to the extent that such credits have a positive effect on EBITDAM, and plus any building and/or land rent paid by or on behalf of Owner that is not associated with the Phase I parking garage; provided, however, that in determining EBITDAM, the following shall not be deducted from Net Revenues:

(a) Depreciation and amortization of the Project, FF&E or other assets of the Company;

(b) Financing costs, including interest charges, principal payments and other debt services on any financing (including the Project Financing), mezzanine financing or any other financing or loans;

(c) Pre-opening expenses;

(d) Capital expenditures, including replacement of FF&E except for normal maintenance and repairs;

(e) Management Fees; and

(f) All franchise, federal, state or municipal income taxes (exclusive of any and all gaming taxes, real property taxes and/or payments due from Owner pursuant to any payment-in-lieu of tax agreement to be entered into between Owner and the Sullivan County Industrial Development Agency).

5.02 Disbursement of Fees. Operator is authorized to disburse to itself from the Operating Account the amounts owing as the Base Fee and the Incentive Fee but, if insufficient funds are available to do so, such amounts shall accrue and the Owner shall pay same to the Operator within thirty (30) days after notice from the Operator.

5.03 Losses. Any operating losses or other losses generated by or arising from the Project in any year shall be borne exclusively by Owner.

ARTICLE 6
INSURANCE AND INDEMNITY

6.01 Property Insurance. Operator shall procure and maintain for the benefit of Owner (and, to the extent applicable, Operator), and Owner shall pay for, from the commencement of the Term (or such earlier date mutually agreed to by Owner and Operator) and thereafter at all times during the Term hereof property insurance, equal to at least one hundred percent (100%) of the insurable value thereof on a replacement cost basis of the Project, or such lesser amount to which Operator may determine, against loss of or damage to the Project and its contents from fire, boiler explosion and such other extended coverage risks and casualties as Operator shall deem necessary. Operator shall also procure and maintain, and Owner shall pay for, business interruption insurance against loss or damage by fire and other hazards customarily included in an extended coverage endorsement, including riot, civil commotion and insurrection, all of said business interruption insurance to be effective from the commencement of the Term and during the Term hereof, and which business interruption insurance shall cover the payment to Operator of its Management Fees. Such liability and property insurance coverage shall list Operator as an additional insured, with a right to thirty (30) days' prior written notice in the event of cancellation or modification of coverage.

6.02 Liability Insurance/Miscellaneous Coverages. Subject to the terms of Section 6.03 of this Agreement, Operator shall procure and maintain for the benefit of Owner (and, to the extent applicable, Operator), and Owner shall pay for, during the Term hereof, the following insurance (or such other insurance as may be determined by Operator in its sole discretion), which insurance shall list Operator and Operator's subsidiaries, affiliates, officers, directors, agents, servants, workmen, and employees as additional insureds, with a right to thirty (30) days' prior written notice in the event of cancellation or modification of coverage, all in such amounts and in such coverage as are commercially reasonable (as determined by Operator in its sole discretion):

- (a) Comprehensive General Liability Insurance including, but not limited to, liquor liability coverage and coverage to protect against theft of or damage to guests' property;
- (b) Employer's Practices Liability Insurance;
- (c) Automobile Liability and Physical Damage Insurance to include broad form drive other car coverage;
- (d) Comprehensive Crime Insurance including, but not limited to, Employee Dishonesty and Depositor's Forgery Coverages;
- (e) Worker's Compensation Insurance and Employer's Liability, and similar insurances as may be required by law;
- (f) Group Benefits Insurance including major medical and hospitalization for Project employees;

(g) Fiduciary Liability Insurance, as required by the Employee Retirement Income Security Act of 1974, covering pension and benefit plans, in a limit sufficient to cover the assets at risk;

(h) Builder's Risk Insurance, if required, including delayed opening coverage;

(i) Any insurance which Owner or Operator may be required to obtain pursuant to any franchise covering the Project;

(j) Umbrella (Excess Liability) Insurance;

(k) Errors and Omissions Insurance;

(l) Any other insurance required by the terms of the financing for the Project; and

(m) Insurance against such other insurable risks as may reasonably be required.

6.03 Insurance Standards and Requirements. It is agreed that all insurance hereunder shall adequately protect Owner and Operator, and shall meet or exceed any requirements of applicable laws, rules or regulations, insurance underwriters, or other third parties having the right to determine insurance requirements for the Project. Insurance procured hereunder shall be placed with reputable, financially sound insurance companies, and shall be obtained in the name of Owner or Operator (as agent for Owner), as the parties may mutually agree. All insurance hereunder shall name Operator and Owner as co-insureds and/or additional insureds. Notwithstanding anything to the contrary herein, Owner shall maintain insurance for the Project and the Property in accordance with the insurance requirements in any Financing Documents.

6.04 Indemnity. Owner agrees:

(a) To indemnify, defend and hold Operator and (if any) its successors and assigns, and their respective officers, directors, employees, workmen, securityholders, agents and affiliates (each, an "***Indemnified Operator Party***"), free and harmless from any liabilities, claims, asserted claims, demands, judgments, losses, costs, damages or expenses whatsoever (including reasonable attorneys', consultants' and other professional fees and disbursements of every kind, nature and description incurred by such Indemnified Operator Party in connection therewith) (collectively, "***Damages***") that such Indemnified Operator Party may sustain, suffer or incur and that result from, arise out of or relate to any act or omission performed or omitted by an Indemnified Operator Party in connection with, or otherwise in connection with, the performance of this Agreement by an Indemnified Operator Party; and

(b) That such Indemnified Operator Party shall not be liable to the Owner for any Damages that Owner may sustain, suffer or incur and that result from, arise out of or relate to any act or omission performed or omitted by an Indemnified Operator Party in connection with, or otherwise in connection with, the performance of this Agreement by an Indemnified Operator Party, except and solely to the extent caused by the fraud, gross negligence or willful misconduct of such Indemnified Operator Party.

(c) This Section 6.04 shall survive the expiration or earlier termination of this Agreement.

6.05 Operator Insurance. Any insurance provided by Operator under this Article 6 may be effected under policies of blanket insurance which cover other properties of Operator's affiliated entities, and the pro rata portion of such premiums shall be charged and allocated to the Project on the same basis as allocated to other participating operations of Operator's affiliated entities. Any policies of insurance maintained by Operator pursuant to the provisions of this Section 6.05 may contain deductible provisions in such amounts as are maintained with respect to other operations of Operator's affiliated entities, taking into account local standards and practices. Further, in lieu of all or a part of comprehensive public liability insurance and worker's compensation and employer's liability insurance under clauses (a) and (d) of Section 6.02, any or all of the risks covered by such insurance may be self-insured or self-assumed by the Owner under a self-insurance or assumption of risk program similar to those in effect at other operations of affiliates of Operator, up to such amounts as such risks are assumed or self-insured at other operations of Operator's affiliated entities.

ARTICLE 7 **GROUP SERVICES BY OPERATOR**

7.01 Group Services. Operator will provide to the Project, the following types of group services provided and/or supervised from Operator's primary corporate offices, in a manner consistent with group services provided by Operator to other hotel and gaming facilities managed by Operator for unaffiliated owners:

(a) general administrative services, in connection with:

- General Operational Supervision and Guidance;
- Supervision of Periodic Quality Control and Inspection;
- Supervision and Support of Employee Hiring and Training;
- Consulting on Project Specific Marketing Functions;
- Sales Coordination;
- Supervision of Operating Performance Measurements and Evaluations;
- Assistance on Advertising and Promotional Program;
- Access to Group Purchasing Programs and Discounts;
- Coordination of Procurement and Installation of Slots Management,
- Supervising the Provision of Accounting and Other Operating Software;
- Support of Regulatory, Licensing and Legal Department;
- General Supervision of Accounting Reports;
- Assistance in Establishment of Internal Controls; and
- Assistance in Establishment of Internal Audit Procedures.

(b) Specific services, whereby Operator's corporate personnel might be dedicated to the Project (on a full-time or part-time basis, for specified time periods) as may be deemed reasonable by Operator and subject to Owner's reasonable approval, for the Project's benefit.

7.02 Costs of Services. The costs of services referred to in Section 7.01 shall be reimbursed by Owner to Operator. Such costs for services include:

(a) Actual out-of-pocket expenses (excluding salary and other compensation) for the personnel necessary to coordinate the above services directly attributable to the Project operation, including, without limitation, telecommunication and travel expenses; and

(b) In the case of specific services described in Section 7.01(b), the actual pro rata compensation cost and out-of-pocket reimbursable telecommunication and travel expenses of personnel while loaned to the Project for its sole benefit.

In the event employees of the Owner at the Project are loaned to Operator or Operator's affiliated entities, with Operator's reasonable approval, for Operator's sole benefit (as opposed to that of the Project), the actual pro rata compensation cost and out-of-pocket reimbursable telecommunication and travel expenses of such loaned personnel shall be reimbursed to Owner by Operator or such Operator-affiliated entity.

7.03 Software Services. As part of the services furnished by Operator under this Agreement, Operator shall provide and connect Operator's data processing computer software (the "**Software**") for the operation of the Project; provided, that Owner shall reimburse Operator for any incremental costs and expenses incurred by Operator and attributable to the Project. In addition, Owner agrees that Operator may need to purchase, at Owner's expense, the necessary data-processing hardware equipment to use the Software in the operation of the Project. Owner further agrees that, as an operating expense of the Project and at Owner's sole cost and expense, Operator may procure such installation, training, retraining and maintenance assistance from Operator's affiliates as Operator, in its commercially reasonable discretion, deems advisable. The costs of services referred to in Section 7.03, to the extent expended by Operator, shall be reimbursed to Operator. For purposes of this Section 7.03, the term "Owner's cost and expense" is defined as a cost which is cost competitive in the marketplace with other comparable available data-processing software and hardware. Owner and Operator acknowledge and agree that any customer database developed and maintained primarily for the Project shall be owned by Owner and shall be used by Operator to incentivize play at the Project as well as for strategic alliances, co-branding efforts, and cooperative marketing initiatives.

ARTICLE 8 **DAMAGE TO AND DESTRUCTION OF THE PROJECT**

8.01 Owner to Restore. Owner agrees that, except as set forth (a) in the Financing Documents or any other applicable financing documents, (b) under the circumstances set forth in the provisions below of this Article 8 or (c) as otherwise agreed to in writing by the Owner and the Operator, to promptly repair, restore, rebuild or replace any insured damage to or impairment or destruction of the Project from fire or other casualty. If Owner shall fail to do so, Operator may, but shall not be obligated to, undertake or complete such work for the account of Owner and shall be entitled to be repaid therefor, and proceeds of insurance shall be made available to Operator.

8.02 Limitation on Restoration. Subject to the terms of the Financing Documents or any other applicable financing documents, if the Project shall be totally destroyed or substantially destroyed during the Term of this Agreement by fire or other casualty and the insurance required by Article 6 of this Agreement shall have been maintained, and Owner has determined in good faith, after consulting with the Operator, contractors, engineers and all other third parties who would be engaged to rebuild the Project, not to rebuild the Project (or a substitute facility in replacement of the Project), either party shall have the right and option, upon notice served to the other party within ninety (90) days after such fire or other casualty, to terminate this Agreement; provided that, under such circumstances or in the event of any other insured casualty, and to the extent that insurance proceeds are received which are attributable to compensate both Owner for its loss of income and business interruption and Operator for its unpaid Management Fees, such insurance proceeds relating to such destruction and business interruption shall be apportioned between Owner and Operator as follows: (a) the proceeds attributable to Owner's loss of income resulting from such destruction (or condemnation for purposes of Article 9 herein) and business interruption ("**Owner's Loss**") shall be paid to Owner, and (b) the proceeds attributable to Operator's loss of Management Fees that would have been paid but for the occurrence of such casualty or condemnation ("**Operator's Loss**") shall be paid to Operator (such amounts in the case of clauses (a) and (b) to be based upon the audited financial statements of the Company for the prior fiscal year and subject to reasonable adjustment for market conditions), except that if the insurance proceeds received by Owner and Operator shall not include funds attributable to Operator's Loss, then the insurance proceeds received shall be apportioned first to compensate Owner for Owner's Loss and second to compensate Operator for Operator's Loss (the "**Payment Priority**"). For purposes of this Agreement, "loss of income" shall mean all of the amounts due to Owner under this Agreement that, if but for the casualty (or condemnation for purposes of Article 9 herein), would have been payable to Owner, and Management Fees due to Operator (collectively, the "**Loss Amount**"). If Owner and Operator cannot agree on a Loss Amount, the parties shall seek a valuation from an independent major investment banking firm or other appropriate independent valuation expert (as the case may be, an "**Expert**"). If Owner and Operator are unable to agree on an Expert, Operator and Owner shall each promptly select its own Expert and the two selected Experts shall be charged with selecting a third Expert acceptable to both such Experts, which third Expert shall be deemed acceptable to Owner and Operator and shall be charged with producing the valuation in question. Any valuation produced by an Expert selected as aforesaid (the "**Expert Valuation**") shall be binding on Operator and Owner.

ARTICLE 9 **CONDEMNATION**

9.01 Total Condemnation. Subject to the terms of the Operating Agreement and any Financing Documents, if the whole of the Project shall be taken or condemned in any eminent domain, condemnation, compulsory acquisition or like proceeding by any competent authority for any public or quasi-public use or purpose, or if such a portion thereof shall be taken or condemned so as to make it imprudent or unfeasible, in Operator's reasonable opinion, to use the remaining portion as a Project of the same type and class as it was immediately preceding such taking or condemnation, then, in either of such events, Operator, in its sole discretion, may determine that the Term of this Agreement shall cease and terminate as of the date of such taking or condemnation and any condemnation award received by Owner or Operator will be disbursed

in accordance with the Payment Priority, it being understood that if the parties cannot agree on the Loss Amount, each party may proceed to hire an Expert and receive the Expert Valuation in accordance with Section 8.02 hereof.

9.02 Partial Condemnation. Subject to the terms of any Financing Documents, if only a part of the Project shall be taken or condemned and the taking or condemnation of such part does not make it unfeasible or imprudent, in Operator's reasonable opinion, to operate the remainder as a Project of the same type and class as it was immediately preceding such taking or condemnation, this Agreement shall not terminate. Any proceeds from such taking or condemnation received from Owner shall be applied (i) first, as shall be reasonably necessary to repair any damage to the Project, or any part thereof, or to alter or modify the Project, or any part thereof, so as to render the Project a complete and satisfactory architectural unit as a Project of the same type and class as it was immediately preceding the taking or condemnation and (ii) second, in accordance with the Payment Priority, it being understood that if the parties cannot agree on the Loss Amount, each party may proceed to hire an Expert and receive the Expert Valuation in accordance with Section 8.02 hereof.

ARTICLE 10 **RELATIONSHIP AND AUTHORITY**

In taking any action pursuant to this Agreement, Operator will be acting only as the appointed agent or representative of Owner, and nothing in this Agreement shall be construed as creating a tenancy, partnership, joint venture or any other relationship between the parties hereto, except that of principal and agent, and neither party shall have the power to bind or obligate the other except as set forth in this Agreement. Operator is, however, granted with such additional authority and powers as agent of Owner as may be necessary to carry out the terms of, and the spirit and intent of, this Agreement. All debts and liabilities properly incurred by Operator in the course of its management and operation of the Project hereunder shall be the debts and obligations of the Owner only, and Operator shall not be liable therefor, except as specifically stated to the contrary herein.

ARTICLE 11 **TERMINATION**

11.01 Termination. This Agreement may not be terminated by any party hereto prior to the end of the Term, provided, **however**, either party ("**Terminating Party**") shall have the right to terminate this Agreement upon sixty (60) days prior written notice to the other party ("**Defaulting Party**") in the event of fraud, gross negligence or willful misconduct by the Defaulting Party which materially adversely affects the Project ("**Termination Trigger**"); **provided, however**, in the event of a terminable act (i) the Terminating Party shall provide the Defaulting Party with written notice describing the alleged Termination Trigger and sixty (60) days to cure such Termination Trigger (or the effects thereof), and (ii) if at the expiration of such sixty (60) day period the Termination Trigger (or the effects thereof), has not been cured, the Terminating Party shall provide a second written notice indicating its intent to terminate this Agreement, which termination shall be effective sixty (60) days after the Defaulting Party receives such second written notice from the Terminating Party, unless (A) such Termination Trigger (or the effects thereof) is cured within the either sixty (60) day period, or (B) if such

Termination Trigger (or the effects thereof) is not of a type that is capable of being cured within either sixty (60) day period, such longer period of time as may be reasonably necessary to cure such Termination Trigger (or the effects thereof), provided the defaulting party is diligently pursuing the cure of such Termination Trigger (or the effects thereof). In the event of a default and termination of this Agreement in accordance with this Section 11.01, the Terminating Party shall be entitled to exercise and enforce any available rights and remedies against the Defaulting Party. In addition, if there shall occur any breach of this Agreement that does not involve fraud, gross negligence or willful misconduct by the defaulting party, and the defaulting party shall fail to cure such breach or default within sixty (60) days of notice thereof from the non-defaulting party (or such longer period of time as may be reasonably necessary to cure such breach or default so long as the defaulting party is diligently pursuing such cure), then the non-defaulting party shall be entitled to exercise and enforce all rights and remedies against such defaulting party available at law or in equity.

11.02 Operator's Right to Terminate Under Certain Circumstances.

Notwithstanding any other provision of this Agreement to the contrary, Operator shall have the right to terminate this Agreement upon written notice to Owner in the event of the occurrence of any of the events or circumstances described in Sections 12.02 or 13.12 of this Agreement or in the event of any liquidation or dissolution of the Owner or termination of the Operating Agreement. For the avoidance of doubt, the acquisition of title to the Property or any portion thereof by a lender, bondholder or agent or collateral trustee on behalf of same as a result of a foreclosure, deed in lieu of foreclosure or other exercise of remedies under any Financing Documents following a default by the borrower thereunder, shall not give rise to a right by Operator to terminate this Agreement.

11.03 Operator's Right to Terminate for License Issues.

(a) Notwithstanding any other provision of this Agreement to the contrary, Operator shall have the right to terminate this Agreement, and exercise any available rights and remedies, upon written notice to the Owner in the event of the occurrence of any event or the existence of any facts with respect to the ownership or management of the Project which, in the Operator's good-faith opinion, would jeopardize any material License or Permit for the Project.

(b) By way of example and without limitation, a determination made by Operator referred to in Section 11.03(a) of this Agreement shall be deemed to be in good faith if based upon (i) any written communication from a gaming regulatory authority of the applicable state; or (ii) written evidence that, if true, the Operator's participation in, or involvement with, this Agreement and/or the management of the Project would violate any law, rule or regulation administered by any gaming regulatory authority, so long as such evidence is not adduced in bad faith by Operator.

ARTICLE 12
SUCCESSORS AND ASSIGNS

12.01 Assignments by Operator. Owner's consent shall be required, such consent not to be unreasonably withheld, delayed or conditioned for Operator to assign this Agreement or its rights and interest in the operation of the Project to any entity which Operator (or any successors or assign of Operator, either directly or indirectly controls, is under common control with, or maintains a controlling interest in, and such assignment shall serve to fully relieve and discharge Operator from any further duties or obligations pursuant to this Agreement. In addition, Owner's consent (not to be unreasonably withheld, delayed or conditioned) shall be required for Operator to collaterally assign this Agreement or its rights and interest in the operation of the Project to any entity as security for indebtedness; provided, that, Operator may pledge up to fifty percent (50%) of its economic interest in this Agreement without Owner's prior consent if such pledge expressly indicates that pledgee shall not have the right to assume any of the rights or obligations of Operator under this Agreement (other than the right to receive up to fifty percent (50%) of the Management Fee) or any control over the Project. Except as hereinabove provided, Operator shall not assign this Agreement or in any manner sell, assign or transfer its rights and interests in the Project without the prior written consent of Owner (not to be unreasonably withheld, conditioned or delayed). It is understood and agreed that any consent granted by the Owner to any such assignment shall not be deemed a waiver of the covenant herein contained against assignment in any subsequent case.

12.02 Transfers by Owner.

(a) Owner may directly or indirectly assign, dispose of, encumber, pledge or otherwise transfer the Project or any of its interest in the Project or this Agreement ("*Transfer*") without the prior written consent of Operator.

(b) In the event of a Transfer of all or any portion of Owner's interest in the Project to an MTGA Competitor, then from and after the closing date of such Transfer, Operator may, in its sole discretion, keep confidential (and elect not to disclose to or share with Owner) information, documents and materials regarding sales or marketing data, activities and strategies relating to the Project, and Operator shall not be required to engage or participate in any joint sales or marketing activities relating to the Project and any competitive property owned or operated by such MTGA Competitor.

(c) Any assignment, transfer or disposition by Owner or any of its constituent partners of any interest in the Project, whether voluntary or involuntary, shall be subject to the terms of this Agreement and shall require that the assignee, purchaser or recipient thereunder assume and be bound by this Agreement, for the benefit of Operator pursuant to an assumption agreement in form and substance reasonably satisfactory to Operator. In addition, no assignment, transfer or other disposition of any interest in the Project shall be permitted if, in the good-faith opinion of the Operator, any such proposed 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 or of Owner, Operator or their respective affiliates by any gaming authorities or other regulatory authorities.

(d) Owner agrees to notify Operator in writing at least sixty (60) days prior to any contemplated Transfer or any assignment, transfer or disposition of the Project, other than a Transfer to a lender, bondholder or agent or collateral trustee on behalf of same as a result of a

foreclosure, deed in lieu of foreclosure or other exercise of remedies under any Financing Documents following a default by the borrower thereunder, in which case Owner shall notify Operator of such contemplated Transfer as soon as is practicable.

12.03 Assigns Bound. Subject to the provisions of this Agreement regarding and/or restricting sale or assignments as set forth elsewhere in this Agreement, the terms, provisions, covenants, undertakings, agreements, obligations and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors in interest and the assigns of the parties hereto with the same effect as if mentioned in each instance where the party hereto is named or referred to, except that no assignment, transfer, pledge, mortgage, lease or sublease by or through Operator or by or through Owner, as the case may be, in violation of the provisions of this Agreement shall vest any rights in the assignee, transferee, mortgagee, pledgee, lessee, sublessee or occupant.

ARTICLE 13 **GENERAL PROVISIONS**

13.01 Best Evidence. This Agreement shall be executed in original and “Xerox” or photostatic or facsimile copies and each copy bearing original signatures of the parties hereto in ink shall be deemed an original.

13.02 Amendment or Modification. This Agreement may not be amended or modified except by a writing signed by all parties hereto.

13.03 Governing Law; Jurisdiction. 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.

13.04 Interpretation. The preamble recitals of this Agreement are incorporated into and made a part of this Agreement; titles of Sections and Articles are for convenience only and are not to be considered a part of this Agreement. All references to a year shall mean a year commencing as of the first day of January of each year. All references to the singular shall include the plural and all references to gender shall, as appropriate, include other genders. The parties hereto acknowledge that they were represented by competent counsel in connection with the negotiation, drafting and execution of this Agreement, and that this Agreement shall not be subject to the principle of construing their meaning against the party which drafted same.

13.05 Severability. In the event any one or more provisions of this Agreement is judicially declared null and void or otherwise unenforceable, the remainder of this Agreement shall survive, unless such survival vitiates the intent of the parties hereto.

13.06 Prohibition on Recordation/Disclosure.

(a) Operator hereby covenants and agrees that it shall not take any action, or authorize or suffer anyone to take any action, the result of which would be to cause this Agreement, or a memorandum thereof, to be filed of record against the realty of the Project.

(b) The parties shall agree to keep and maintain the terms of this Agreement confidential, except as may be required by law, provided that Owner may disclose the existence, terms, provisions and conditions of this Agreement to any prospective purchasers and mortgagees of the realty of the Project, subject to a written agreement by any such party for the benefit of Owner and Operator to keep and maintain the confidentiality of such information.

13.07 Savings Clause. To the extent that any provision of this Agreement is prohibited or ineffective under any applicable gaming law or regulation, this Agreement shall be considered automatically amended to the smallest degree possible in order to make the Agreement effective under such gaming law or regulation (and, if such gaming law or regulation is subsequently amended or interpreted in such manner as to make effective any provision of this Agreement that was formerly rendered invalid, such provision shall automatically be considered to be valid from the effective date of such amendment or interpretation).

13.08 Force Majeure. The parties to this Agreement shall be excused from the performance of any obligation under this Agreement if the Operator is prevented by any force majeure cause beyond the reasonable control of Operator such as an act of God, strike, lockout, breakdown, economic collapse, accident, order or regulation of or by any governmental authority, delay in obtaining any approval required by any governmental authority (and such delay is not caused by the Operator), failure of supply or inability, by the exercise of reasonable diligence, to obtain supplies, parts or employees necessary to perform such obligation, or war, terrorism or other emergency. The time within which such obligation must be performed will be extended for a period of time equivalent to the delay from such cause. But failure to perform by Operator's subcontractors or agents will not be considered a force majeure unless such subcontractor or supplier is prevented from timely performance by a force majeure as described above.

13.09 Waiver. None of the terms of this Agreement, including this Section 13.09, 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.

13.10 General Warranties; Disclaimer of Warranties. Each party hereto warrants and represents to the other as follows:

(a) Each party has pursued or will diligently pursue all necessary governmental licenses and permits required to satisfy its obligations under this Agreement; and

(b) Each party has the right, power, title and authority to enter into this Agreement.

13.11 Parol. 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.

13.12 Termination of Agreement. Operator shall have the right to terminate this Agreement and exercise any available remedies if the Owner at any time is definitively rejected for a gaming license for the Project without the possibility of appeal or such license is definitively revoked.

13.13 Regulatory Approvals. This Agreement is subject to the approval of Operator's participation as manager of the Project by any gaming authority which requires such approval.

13.14 Attorneys' Fees. In any action or proceeding brought by any party against any other party under this Agreement, the substantially prevailing party shall be entitled to recover from the other party attorneys' fees, investigation costs, and other legal expenses and court costs incurred by such party in such action or proceeding as the court may find to be reasonable.

13.15 Liability. The parties hereto agree that in no event shall either party be liable for indirect, special or consequential damages.

13.16 No Third Party Beneficiaries. Nothing in this Agreement shall be construed as implying or intending any third party beneficiaries to this Agreement.

13.17 Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts, with the same effect as if all parties had signed the same documents, each of which will be considered an original, but all such counterparts together will constitute but one and the same Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the day and year first above written.

OWNER:

CONCORD KIAMESHA CASINO LLC:

By: _____
Name: _____
Title: _____

OPERATOR:

MOHEGAN GAMING NEW YORK, LLC

By: _____
Name: _____
Title: _____

Accepted and agreed to:

CONCORD KIAMESHA HOTEL LLC

By: _____
Name: _____
Title: _____

EXHIBIT A

DEFINED TERMS

“Affiliate” shall mean any Person which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a specified Person. For purposes hereof, the terms “control”, “controlled”, or “controlling” with respect to a specified Person shall include, without limitation, (i) the ownership, control or power to vote ten percent (10%) or more of (x) the outstanding shares of any class of voting securities or (y) beneficial interests, of any such Person, directly or indirectly, or acting through one or more Persons, (ii) the control in any manner over the managing member(s) or the election of more than one director or trustee (or Persons exercising similar functions) of such Person, or (iii) the power to exercise, directly or indirectly, control over the management or policies of such Person.

“Agency” or “Agencies” shall mean the New York State Gaming Commission, the Division of the Lottery of the State of New York, and any other Governmental Authority with jurisdiction over racing or gaming activities of Owner or any of its subsidiaries.

“Project Loan Documents” shall mean, collectively, the Notes, Mortgage, Pledge and Security Agreement, Guaranties and any other documents, instruments or agreements entered into by certain direct or indirect subsidiaries or Affiliates of Owner in order to evidence, secure or guaranty the Project Financing..

“Project Financing” shall mean construction financing and any replacement financing that shall be obtained by Owner and certain of its direct and indirect subsidiaries to construct and effectuate the Project.

“Brownfield Real Property Tax Credits” shall mean the brownfield real property tax credits provided for by Sections 22 and 606(dd) of the New York Tax Law, and sections related thereto, which are generated by or attributed to the Project.

“Brownfield Redevelopment Tax Credits” shall mean the brownfield redevelopment tax credit provided for by Title 14 of New York State Environmental Conservation Law Section 27 and New York State Tax Laws Sections 21, 606(dd) and 606(i), and sections related thereto.

“Brownfield Tax Credits” shall mean, collectively, the Brownfield Real Property Tax Credit and the Brownfield Redevelopment Tax Credit.

“Budgets” shall mean the Operating Budget and the Project Capital Budget.

“Capital Budget” shall mean the capital budget for the design, development, and construction of the Project, attached hereto as Schedule B and made a part hereof.

“Completion Date” shall mean the date on which all construction work on Phase I is completed substantially in accordance with the Plans and Specifications and operations commence at the Gaming Facilities to be constructed on the Property, provided that such date shall not be deemed

to occur earlier than the date on which both (i) a temporary certificate of occupancy is issued with respect to the Gaming Facilities and (ii) the Agencies approve the commencement of operations of the Gaming Facilities at the Property if such approval is required.

“FF&E” shall mean all fixtures, furnishings, equipment, furniture, and other items of tangible personal property owned or leased by Owner located at the Property.

“FF&E Financing” shall mean financing for fixtures, furniture and equipment obtained by Owner from certain lenders, as such financing may be amended, replaced, supplemented, refinanced or otherwise modified from time to time.

“Financing Documents” shall mean, collectively, all agreements between the Owner and any third party lender or financing source with respect to any loan or financing for the Project or any component thereof, including without limitation the Project Financing, the Hotel Loan and any other bond financing or loan that shall be obtained by the Company.

“Gaming Facilities” shall mean the casino and associated gaming facilities to be constructed at the Project as described in the Plans and Specifications and Capital Budget.

“Governmental Authority” shall mean any domestic, foreign, federal, state, provincial or local authority, legislative body, court, government, regulatory agency, self-regulatory organization (including any securities exchange), commission, board, arbitral or other tribunal, or any political or other subdivision, department or branch of any of the foregoing, including the Agencies.

“Hotel” shall mean the hotel to be constructed at the Project as described in the Plans and Specifications and Capital Budget.

“Hotel Loan” shall mean those certain loans in the aggregate principal amount of \$_____ made or to be made to an Affiliate of Owner.

“License” shall mean any license, permit, approval, authorization, registration, finding of suitability, franchise, entitlement, waiver or exemption issued by a Governmental Authority, with respect to the Gaming Facilities, Hotel or any other component or portion of the Project, including any Permit.

“License Agreement” shall mean the License Agreement, dated as of the date hereof, between Operator, as licensor, and Concord Kiamesha Casino LLC, and Concord Kiamesha Hotel LLC, collectively, as licensee, with respect to the use in connection with the Project of certain trade names, trademarks and other intellectual property owned by Operator and its affiliates, as such agreement may be amended, modified or supplemented from time to time.

“MTGA Competitor” shall mean (A) any Person that owns any beneficial equity interest in, or operates, a casino, racetrack or other gaming facility within a one hundred (100) mile radius of (i) the Property, (ii) the Mohegan Sun Casino in Uncasville, Connecticut, or (iii) the Mohegan Sun Casino at Pocono Downs in Wilkes-Barre, Pennsylvania, or (B) any Affiliate of any Person described in the preceding clauses (A)(i), (A)(ii) or (A)(iii).

“Operating Budget” shall mean the most recent annual operating budget for the Project as approved pursuant to Section 4.10 hereof.

“Permit” shall mean any building, construction, land use, environmental or other permit, license, franchise, approval, consent and authorization (excluding any License issued by any Agency) required for or in connection with the construction, ownership, use, occupation and operation of all or a material portion of the Project.

“Person” shall mean any individual, partnership, limited liability company, corporation, trust or other entity.

“Phase I” shall mean Phase I of the Project as described in the Plans and Specifications and Capital Budget.

“Plans and Specifications” shall mean the designs, plans and specifications for the Project which have been approved by Owner.

“Project Capital Budget” shall mean the budget approved pursuant to Section 4.10 hereof for capital expenditures on new projects (other than the Project), provided that such budget shall not address any amounts budgeted for maintenance expenses.

“Property” shall mean certain real property in the Town of Thompson, New York, as more fully described in Schedule A attached hereto and made a part hereof.