

TRADEMARK ASSIGNMENT

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	SECURITY INTEREST

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
SHINGLE SPRINGS TRIBAL GAMING AUTHORITY		08/29/2013	an unincorporated instrumentality and political subdivision of the Shingle Springs Band of Miwok Indians, a federally recognized Indian tribe: UNITED STATES

**RECEIVING PARTY DATA**

Name:	BANK OF AMERICA, N.A.
Street Address:	101 N Tryon St.
Internal Address:	Mail Code: NC1-001-05-45
City:	Charlotte
State/Country:	NORTH CAROLINA
Postal Code:	28255
Entity Type:	national banking association: UNITED STATES

**PROPERTY NUMBERS Total: 2**

Property Type	Number	Word Mark
Registration Number:	3886697	RED HAWK CASINO
Registration Number:	4128909	FORTUNE'S REWARDS

**CORRESPONDENCE DATA**

Fax Number: 7147558290

*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.*

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OP \$65.00 3886697

ATTORNEY DOCKET NUMBER:	(042541-0040)
NAME OF SUBMITTER:	Adam Kummins
Signature:	/Adam Kummins/
Date:	09/03/2013

**Total Attachments: 113**

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**SECURITY AGREEMENT**

**among**

**SHINGLE SPRINGS TRIBAL GAMING AUTHORITY  
as Borrower and a Grantor**

**and**

**EACH OF THE OTHER GRANTORS PARTY HERETO,  
as Grantors**

**and**

**BANK OF AMERICA, N.A.  
as Collateral Agent**

**Dated as of August 29, 2013**

## TABLE OF CONTENTS

<b>SECTION 1.</b>	<b>DEFINITIONS.....</b>	<b>1</b>
1.1	General Definitions.....	1
1.2	Definitions; Interpretation.....	9
<b>SECTION 2.</b>	<b>GRANT OF SECURITY.....</b>	<b>9</b>
2.1	Grant of Security Interest by Grantors.....	9
2.2	Certain Limited Exclusions.....	10
<b>SECTION 3.</b>	<b>SECURITY FOR OBLIGATIONS, GRANTORS REMAIN</b>	
<b>LIABLE.</b>	<b>10</b>	
3.1	Security for Obligations.....	10
3.2	Continuing Liability Under Collateral.....	10
<b>SECTION 4.</b>	<b>REPRESENTATIONS AND WARRANTIES AND</b>	
	<b>COVENANTS.....</b>	<b>11</b>
4.1	Generally.....	11
4.2	Equipment and Inventory.....	14
4.3	Receivables.....	15
4.4	Investment Related Property.....	17
4.5	Material Contracts.....	21
4.6	Letter-of-Credit Rights.....	22
4.7	Intellectual Property.....	22
4.8	Commercial Tort Claims.....	25
4.9	Pledged Revenues.....	25
4.10	Perfection of <i>De Minimis</i> Collateral.....	25
<b>SECTION 5.</b>	<b>ACCESS; RIGHT OF INSPECTION AND FURTHER</b>	
	<b>ASSURANCES; ADDITIONAL GRANTORS.....</b>	<b>25</b>
5.1	Access; Right of Inspection.....	26
5.2	Further Assurances.....	26
5.3	Additional Grantors.....	27
5.4	Maintenance of Insurance.....	27
<b>SECTION 6.</b>	<b>COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT.....</b>	<b>27</b>
6.1	Power of Attorney.....	27
6.2	No Duty on the Part of Collateral Agent or Secured Parties.....	28
<b>SECTION 7.</b>	<b>REMEDIES.....</b>	<b>29</b>

7.1	Generally.....	29
7.2	Application of Proceeds.....	31
7.3	Sales on Credit.....	31
7.4	Investment Accounts.....	31
7.5	Investment Related Property.....	31
7.6	Intellectual Property.....	32
7.7	Cash Proceeds.....	33
<b>SECTION 8.</b>	<b>COLLATERAL AGENT.....</b>	<b>34</b>
<b>SECTION 9.</b>	<b>CONTINUING SECURITY INTEREST; TRANSFER OF</b>	
	<b>LOANS. 34</b>	
<b>SECTION 10.</b>	<b>STANDARD OF CARE; COLLATERAL AGENT MAY</b>	
	<b>PERFORM. 35</b>	
<b>SECTION 11.</b>	<b>MISCELLANEOUS.....</b>	<b>35</b>
11.1	General.....	35
11.2	Waivers.....	36
11.3	IGRA Compliance.....	37
11.4	Section 81 Compliance.....	38
11.5	Updates to Disclosure Schedules.....	38
11.6	Governing Law.....	38
11.7	Waiver of Sovereign Immunity.....	38
11.8	Consents to Jurisdiction; Waivers of Venue; Exhaustion; Service of Process.....	39
11.9	Waiver of Jury Trial.....	41
11.10	Arbitration.....	42

**Schedules**

Schedule 4.1 — General Information

- (A) Type of Organization; Jurisdiction; Organizational Identification Number; Chief Executive Office
- (B) Other Business Names
- (C) Changes in Jurisdiction
- (D) Security Agreements
- (E) UCC Filing Offices
- (F) Farm Products
- (G) Extracted Collateral

Schedule 4.2 — Location of Equipment and Inventory

Schedule 4.4 — Investment Related Property

- (A) Equity Interests
- (B) Pledged Debt
- (C) Securities Accounts
- (D) Commodities Accounts

(E) Deposit Accounts  
Schedule 4.5 — Material Contracts  
Schedule 4.6 — Description of Letters of Credit  
Schedule 4.7 — Intellectual Property  
    (A) Copyrights  
    (B) Copyright Licenses  
    (C) Patents  
    (D) Patent Licenses  
    (E) Trademarks  
    (F) Trademark Licenses  
    (G) Trade Secret Licenses  
Schedule 4.8 — Commercial Tort Claims

**Annexes and Exhibits**

Annex I — Joinder Agreement  
Exhibit A — Security Agreement Supplement  
Exhibit B — Account Control Agreement  
Exhibit C — Securities Account Control Agreement  
Exhibit D — Uncertificated Securities Control Agreement



## SECURITY AGREEMENT

This SECURITY AGREEMENT, dated as of August 29, 2013 (this “**Agreement**”), is made by (a) SHINGLE SPRINGS TRIBAL GAMING AUTHORITY (the “**Borrower**”), an unincorporated instrumentality and political subdivision of the Shingle Springs Band of Miwok Indians (the “**Tribe**”), a federally recognized Indian tribe, and (b) EACH OF THE OTHER PARTIES HERETO, whether as an original signatory hereto or as an Additional Grantor (each, a “**Grantor**” and, collectively, together with the Borrower, the “**Grantors**”), in favor of BANK OF AMERICA, N.A., in its capacity as Administrative Agent under the Credit Agreement (as defined below), as collateral agent hereunder for the benefit of the Secured Parties (together with its successors and assigns in such capacity, the “**Collateral Agent**”).

### RECITALS

WHEREAS, reference is made to that certain Credit Agreement, dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified, renewed, replaced or refinanced from time to time, the “**Credit Agreement**”), by and among the Borrower, the Tribe, the Lenders from time to time party thereto and the Collateral Agent;

WHEREAS, subject to the terms and conditions of the Credit Agreement, certain Grantors may enter into (i) one or more Secured Hedge Agreements with one or more counterparties to a Secured Hedge Agreement, and (ii) one or more Secured Cash Management Agreements with one or more counterparties to a Secured Cash Management Agreement; and

WHEREAS, in consideration of the extensions of credit and other accommodations of the Secured Parties as set forth in the Credit Agreement, the Secured Hedge Agreements and the Secured Cash Management Agreements, respectively, each Grantor has agreed to secure such Grantor’s obligations under the Loan Documents, the Secured Hedge Agreements and the Secured Cash Management Agreements as set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the agreements, provisions and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Grantor and the Collateral Agent, for the benefit of the Secured Parties, hereby agree as follows:

#### SECTION 1. DEFINITIONS.

**1.1 General Definitions.** In this Agreement, the following terms shall have the following meanings:

“**AAA**” shall have the meaning given in Section 11.10.

“**Account Control Agreement**” shall mean each Account Control Agreement, dated as of the date hereof or entered into after the date hereof, substantially in the form of Exhibit B attached hereto or in such other form as approved by the Collateral Agent, by and

among the Borrower or any other Grantor, a depository bank, the Collateral Agent and each other Person that is a party thereto, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, pursuant to which the Collateral Agent is granted control over the Deposit Accounts listed therein.

“**Account Debtor**” shall mean each Person who is obligated on a Receivable or any Supporting Obligation related thereto.

“**Accounts**” shall mean all “accounts” as defined in Article 9 of the UCC.

“**Action**” shall have the meaning given in Section 11.7.

“**Additional Grantor**” shall have the meaning given in Section 5.3.

“**Agreement**” shall have the meaning given in the preamble.

“**Assigned Agreements**” shall mean all agreements and contracts (other than the Loan Documents and the Unsecured Notes Indenture) to which a Grantor was a party prior to the date hereof, which a Grantor is a party as of the date hereof, or to which a Grantor becomes a party after the date hereof, including, without limitation, each Material Contract, as each such agreement may be amended, amended and restated, supplemented or otherwise modified from time to time.

“**Borrower**” shall have the meaning given in the preamble.

“**California Federal Courts**” shall have the meaning given in Section 11.8.

“**California State Courts**” shall have the meaning given in Section 11.8.

“**Cash Proceeds**” shall have the meaning given in Section 7.7.

“**Chattel Paper**” shall mean all “chattel paper” as defined in Article 9 of the UCC, including, without limitation, “electronic chattel paper” or “tangible chattel paper”, as each term is defined in Article 9 of the UCC.

“**Collateral**” shall have the meaning given in Section 2.1.

“**Collateral Agent**” shall have the meaning given in the preamble.

“**Collateral Records**” shall mean books, records, ledger cards, files, correspondence, customer lists, blueprints, technical specifications, manuals, computer software, computer printouts, tapes, disks and related data processing software and similar items that at any time evidence or contain information relating to any of the Collateral or are otherwise necessary or helpful in the collection thereof or realization thereupon.

“**Collateral Support**” shall mean all property assigned, hypothecated or otherwise securing any Collateral and shall include any security agreement or other agreement granting a lien or security interest in such property.

**“Commercial Tort Claims”** shall mean all “commercial tort claims” as defined in Article 9 of the UCC, including, without limitation, all commercial tort claims listed on Schedule 4.8.

**“Commodities Accounts”** (i) shall mean all “commodity accounts” as defined in Article 9 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4(D) under the heading “Commodities Accounts.”

**“Commodity Exchange Act”** means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

**“Consented Courts”** shall have the meaning given in Section 11.8.

**“Control Notice”** shall have the meaning given in Section 7.1(f).

**“Copyright Licenses”** shall mean any and all agreements providing for the granting of any right in or to Copyrights (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(B).

**“Copyrights”** shall mean all United States, and foreign copyrights (including community designs), including but not limited to copyrights in software and databases, and all Mask Works (as defined under 17 U.S.C. 901 of the U.S. Copyright Act), whether registered or unregistered, and, with respect to any and all of the foregoing: (i) all registrations and applications therefor including, without limitation, the registrations and applications referred to in Schedule 4.7(A); (ii) all extensions and renewals thereof; (iii) all rights corresponding thereto throughout the world; (iv) all rights to sue for past, present and future infringements thereof; and (v) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages and proceeds of suit.

**“Credit Agreement”** shall have the meaning given in the recitals.

**“Deposit Accounts”** (i) shall mean all “deposit accounts” as defined in Article 9 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4(E) under the heading “Deposit Accounts”.

**“Documents”** shall mean all “documents” as defined in Article 9 of the UCC.

**“Equipment”** shall mean: (i) all “equipment” as defined in Article 9 of the UCC; (ii) all machinery, manufacturing equipment, data processing equipment, computers, office equipment, furnishings, furniture, appliances and tools (in each case, regardless of whether characterized as equipment under the UCC); and (iii) all accessions or additions thereto, all parts thereof, whether or not at any time of determination incorporated or installed therein or attached thereto, and all replacements therefor, wherever located, now or hereafter existing.

**“Excluded Assets”** shall mean (i) any funds or other assets actually distributed to the Tribe in compliance with Section 7.06 of the Credit Agreement; (ii) any license, rights or other interests (including any proprietary interest) of any Grantor to engage in any gaming regulated by the Compact or IGRA and other leases, permits, licenses, contracts, agreements and

other contract rights to the extent the same (A) cannot be mortgaged, pledged or assigned as security for the Secured Obligations under federal law, or (B) is prohibited by a term, provision or condition of any such lease, permit, license, contract, agreement or other contract right or interest in favor of a Person who is not a Grantor or an Affiliate of a Grantor (other than to the extent that any such Law, term, provision or condition would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC (or any successor provision or provisions) of any relevant jurisdiction or any other applicable law (including the Code) or principles of equity), provided, however, that with respect to clause (ii) such security interest shall attach immediately at such time as the condition causing unenforceability shall be remedied and to the extent severable, shall attach immediately to any portion of such lease, permit, license, contract, agreement or other contract right or interest that does not result in any of the consequences specified in clauses (ii); (iii) any rights of any Grantor to engage in gaming regulated by the Compact or IGRA or to engage in any Management Activities; (iv) any Equity Interest in any Grantor; (v) all Payroll Accounts; (vi) motor vehicles covered by certificates of title; (vii) Protected Assets; and (viii) other assets of the Tribe used in connection with the Tribe's provision of customary essential governmental services, such as those related to health, safety and welfare.

**“Excluded Swap Obligation”** means, with respect to any Grantor, as it relates to all or a portion of the grant by such Grantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Grantor's failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Grantor would otherwise become effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which security interest is or becomes illegal or unlawful.

**“Federal Courts”** shall have the meaning given in Section 11.8.

**“General Intangibles”** (i) shall mean all “general intangibles” as defined in Article 9 of the UCC, including “payment intangibles” also as defined in Article 9 of the UCC and (ii) shall include, without limitation, all interest rate or currency protection or hedging arrangements, all tax refunds, all licenses, permits, concessions and authorizations, all Assigned Agreements and all Intellectual Property (in each case, regardless of whether characterized as general intangibles under the UCC).

**“Goods”** (i) shall mean all “goods” as defined in Article 9 of the UCC and (ii) shall include, without limitation, all Inventory and Equipment (in each case, regardless of whether characterized as goods under the UCC).

**“Grantees”** shall have the meaning given in Section 11.7.

**“Grantors”** shall have the meaning given in the preamble.

**“Instruments”** shall mean all “instruments” as defined in Article 9 of the UCC.

**“Insurance”** shall mean (i) all insurance policies covering any or all of the Collateral (regardless of whether the Collateral Agent is the loss payee thereof) and (ii) any key man life insurance policies.

**“Intellectual Property”** shall mean, collectively, all rights, priorities and privileges with respect to intellectual property, whether arising under United States, Tribe, multinational or foreign laws or otherwise, including, without limitation, the Copyrights, the Copyright Licenses, the Patents, the Patent Licenses, the Trademarks, the Trademark Licenses, the Trade Secrets, and the Trade Secret Licenses, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

**“Inventory”** shall mean (i) all “inventory” as defined in Article 9 of the UCC and (ii) all goods held for sale or lease or to be furnished under contracts of service or so leased or furnished, all raw materials, work in process, finished goods, and materials used or consumed in the manufacture, packing, shipping, advertising, selling, leasing, furnishing or production of such inventory or otherwise used or consumed in any Grantor’s business; all goods in which any Grantor has an interest in mass or a joint or other interest or right of any kind; and all goods which are returned to or repossessed by any Grantor, all computer programs embedded in any goods and all accessions thereto and products thereof (in each case, regardless of whether characterized as inventory under the UCC).

**“Investment Accounts”** shall mean the Securities Accounts, Commodities Accounts and Deposit Accounts.

**“Investment Related Property”** shall mean: (i) all “investment property” (as such term is defined in Article 9 of the UCC) and (ii) all of the following (regardless of whether classified as investment property under the UCC): all Pledged Debt, the Investment Accounts and certificates of deposit.

**“Joinder Agreement”** shall mean a Joinder Agreement substantially in the form of Annex I.

**“Letter-of-Credit Right”** shall mean “letter-of-credit right” as defined in Article 9 of the UCC.

**“Management Activities”** shall have the meaning given in Section 11.3.

**“Money”** shall mean “money” as defined in the UCC.

**“Negotiable Document”** shall have the meaning given in Section 4.2(a)(ii).

**“New York Federal Courts”** shall have the meaning given in Section 11.8.

**“New York State Courts”** shall have the meaning given in Section 11.8.

“**New York UCC**” shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York.

“**Non-Management Obligations**” means any obligation of any Person, other than an obligation to perform any act or refrain from performing any act that constitutes a Management Activity prohibited by Section 11.3.

“**Patent Licenses**” shall mean all agreements providing for the granting of any right in or to Patents (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(D).

“**Patents**” shall mean all United States and foreign patents and certificates of invention, or similar industrial property rights, and applications for any of the foregoing, including, but not limited to: (i) each patent and patent application referred to in Schedule 4.7(C); (ii) all reissues, divisions, continuations, continuations-in-part, extensions, renewals, and reexaminations thereof; (iii) all rights corresponding thereto throughout the world; (iv) all inventions and improvements described therein; (v) all rights to sue for past, present and future infringements thereof; (vi) all licenses, claims, damages, and proceeds of suit arising therefrom; and (vii) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

“**Pledged Debt**” shall mean all Indebtedness owed to any Grantor, including, without limitation, all Indebtedness described on Schedule 4.4(B) under the heading “Pledged Debt,” issued by the obligors named therein, the instruments evidencing such Indebtedness, and all interest, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such Indebtedness.

“**Pledged Revenues**” means all rents, profits, income, distributions, royalties, revenues and receipts (including, without limitation, all Pledged Revenues (as defined in the Secured Transactions Ordinance)) derived at any time and in any manner by the Grantors and all of the Grantors’ rights to, and interest with respect to the foregoing before actual possession, including without limitation, from or related to the Gaming Business or the Casino and Hotel Properties, whether the same consists of money, instruments, or otherwise, and whether or not the same has been deposited into any account or merely received or accrued.

“**Proceeds**” shall mean: (i) all “proceeds” as defined in Article 9 of the UCC; and (ii) shall include all dividends, payments or distributions made with respect to any Investment Related Property and whatever is receivable or received when Collateral or proceeds are sold, exchanged, collected or otherwise disposed of, whether such disposition is voluntary or involuntary (in each case, regardless of whether characterized as proceeds under the UCC).

“**Qualified ECP Guarantor**” means, in respect of any Swap Obligation, each Grantor that has total assets exceeding \$10,000,000 at the time the relevant grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible

contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“**Receivables**” shall mean all rights to payment, whether or not earned by performance, for goods or other property sold, leased, licensed, assigned or otherwise disposed of, or services rendered or to be rendered, including, without limitation all such rights constituting or evidenced by any Account, Chattel Paper, Instrument, General Intangible or Investment Related Property, together with all of Grantor’s rights, if any, in any goods or other property giving rise to such right to payment and all Collateral Support and Supporting Obligations related thereto and all Receivables Records.

“**Receivables Records**” shall mean (i) all original copies of all documents, instruments or other writings or electronic records or other Records evidencing the Receivables; (ii) all books, correspondence, credit or other files, Records, ledger sheets or cards, invoices, and other papers relating to Receivables, including, without limitation, all tapes, cards, computer tapes, computer discs, computer runs, record keeping systems and other papers and documents relating to the Receivables, whether in the possession or under the control of any Grantor or any computer bureau or agent from time to time acting for any Grantor or otherwise; (iii) all evidences of the filing of financing statements and the registration of other instruments in connection therewith, and amendments, supplements or other modifications thereto, notices to other creditors or secured parties, and certificates, acknowledgments, or other writings, including, without limitation, lien search reports, from filing or other registration officers; (iv) all credit information, reports and memoranda relating thereto; and (v) all other written or nonwritten forms of information related in any way to the foregoing or any Receivable.

“**Record**” shall have the meaning specified in Article 9 of the UCC.

“**Secured Non-Management Obligations**” means Secured Obligations that are Non-Management Obligations.

“**Secured Obligations**” shall have the meaning given in Section 3.1.

“**Securities Account Control Agreement**” shall mean each Securities Account Control Agreement, dated as of the date hereof or entered into after the date hereof, substantially in the form of Exhibit C attached hereto or in such other form as approved by the Collateral Agent, by and among the Borrower or any other Grantor, a securities intermediary, the Collateral Agent and each other Person that is a party thereto, as amended, restated, amended and restated, supplemented or otherwise modified from time to time, pursuant to which the Collateral Agent is granted control over the Securities Accounts listed therein.

“**Securities Accounts**” (i) shall mean all “securities accounts” as defined in Article 8 of the UCC and (ii) shall include, without limitation, all of the accounts listed on Schedule 4.4(C) under the heading “Securities Accounts.”

“**Securities Act**” shall mean the Securities Act of 1933, as amended from time to time, and any successor statute.

“**Security Agreement Supplement**” shall mean any supplement to this agreement in substantially the form of Exhibit A attached hereto, together with all supplements to schedules attached thereto.

“**Supporting Obligation**” shall mean all “supporting obligations” as defined in Article 9 of the UCC.

“**Swap Obligation**” means, with respect to any Grantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“**Trademark Licenses**” shall mean any and all agreements providing for the granting of any right in or to Trademarks (whether such Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(F).

“**Trademarks**” shall mean all United States, Tribe and foreign trademarks, trade names, corporate names, company names, business names, fictitious business names, Internet domain names, service marks, certification marks, collective marks, logos, other source or business identifiers, designs and general intangibles of a like nature, all registrations and applications for any of the foregoing including, but not limited to: (i) the registrations and applications referred to in Schedule 4.7(E); (ii) all extensions or renewals of any of the foregoing; (iii) all of the goodwill of the business connected with the use of and symbolized by the foregoing; (iv) the right to sue for past, present and future infringement or dilution of any of the foregoing or for any injury to goodwill; and (v) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

“**Trade Secret Licenses**” shall mean any and all agreements providing for the granting of any right in or to Trade Secrets (whether any Grantor is licensee or licensor thereunder) including, without limitation, each agreement referred to in Schedule 4.7(G).

“**Trade Secrets**” shall mean all trade secrets and all other confidential or proprietary information and know-how whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating, or referring in any way to such Trade Secret, including but not limited to: (i) the right to sue for past, present and future misappropriation or other violation of any Trade Secret and (ii) all Proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages, and proceeds of suit.

“**Tribal Officer**” shall have the meaning given in Section 11.8.

“**Tribe**” shall have the meaning given in the preamble.

“**UCC**” shall mean the New York UCC; provided, however, that in the event that (a) by reason of mandatory provisions of law, any or all of the perfection or priority of the security interest in any Collateral is governed by (i) the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York or (ii) the Secured Transactions Ordinance, or (b) the security interest in any Collateral cannot be perfected under the New York UCC but such security interest may be perfected under (i) the Uniform Commercial Code as in effect in a



jurisdiction other than the State of New York or (ii) the Secured Transaction Ordinance, the term “UCC” shall mean the Uniform Commercial Code as in effect in such other jurisdiction or the Secured Transactions Ordinance, as applicable, for purposes of the provisions hereof relating to such perfection or priority and for purposes of definitions related to such provisions.

**1.2 Definitions; Interpretation.** All capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein and the terms “payment in full” and “paid in full” shall have the meanings ascribed thereto in the Credit Agreement or, if not defined therein, in the UCC. The rules of construction set forth in Sections 1.02, 1.03, 1.04, 1.05 and 1.06 of the Credit Agreement, including with respect to the meaning of the expressions “payment in full”, “paid in full” and any other similar terms or phrases, shall be applicable to this Agreement *mutatis mutandis*. If any conflict or inconsistency exists between this Agreement and the Credit Agreement, the Credit Agreement shall govern. All references herein to provisions of the UCC shall include all successor provisions under any subsequent version or amendment to any Article of the UCC. Except as expressly specified otherwise herein, any reference herein to any Exhibit or Schedule to this Agreement shall be deemed to refer to such Exhibit or Schedule as amended or supplemented from time to time.

## **SECTION 2. GRANT OF SECURITY.**

**2.1 Grant of Security Interest by Grantors.** Each Grantor hereby assigns as security to the Collateral Agent (for the benefit of the Secured Parties), and hereby grants to the Collateral Agent (for the benefit of the Secured Parties) a security interest in and continuing lien on, all of such Grantor’s right, title and interest in, to and under the following property, in each case whether now owned or existing or hereafter acquired or arising and wherever located (collectively, but exclusive of any Excluded Assets, the “**Collateral**”), for the prompt and complete payment and performance in full when due and with all rights and remedies under the New York UCC, the Secured Transactions Ordinance or any other applicable Uniform Commercial Code (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) of the Secured Obligations:

- (a) Accounts;
- (b) Chattel Paper;
- (c) Documents;
- (d) General Intangibles;
- (e) Goods;
- (f) Instruments;
- (g) Insurance;
- (h) Intellectual Property;
- (i) Investment Related Property;

(j) Letters of Credit and Letter-of-Credit Rights;

(k) Money;

(l) Receivables and Receivable Records;

(m) Pledged Revenues;

(n) Commercial Tort Claims;

(o) to the extent not otherwise included above, all Collateral Records, Collateral Support and Supporting Obligations relating to any of the foregoing;

(p) to the extent not otherwise included above, all other personal property of the Grantors; and

(q) to the extent not otherwise included above, all Proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

**2.2 Certain Limited Exclusions.** Notwithstanding anything herein to the contrary, but subject to the next sentence of this Section 2.2, in no event shall the security interest granted under Section 2.1 attach to any Excluded Assets (other than Proceeds of Excluded Assets, except to the extent such Proceeds independently constitute Excluded Assets). Notwithstanding the foregoing, all Proceeds of the Excluded Assets (other than such Proceeds which independently constitute Excluded Assets) shall constitute Collateral hereunder and shall be included within the property and assets over which a security interest is granted under Section 2.1.

### **SECTION 3. SECURITY FOR OBLIGATIONS, GRANTORS REMAIN LIABLE.**

**3.1 Security for Obligations.** This Agreement secures, and the Collateral is collateral security for, with respect to each Grantor, the prompt and complete payment and performance in full when due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including the payment of amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Debtor Relief Laws), of all Obligations of such Grantor (collectively, the “**Secured Obligations**”). Notwithstanding any provision of this Agreement or any other Loan Document to the contrary, as to each Grantor, in no event will the Secured Obligations include any Excluded Swap Obligations of such Grantor.

**3.2 Continuing Liability Under Collateral.** Notwithstanding anything herein to the contrary, subject to Section 11.3, (i) each Grantor shall remain liable for obligations under the Collateral and nothing contained herein is intended or shall be a delegation of duties to the Collateral Agent or any Secured Party; (ii) each Grantor shall remain liable under each of the agreements included in the Collateral and to perform all of the obligations undertaken by it thereunder all in accordance with and pursuant to the terms and provisions thereof and neither the Collateral Agent nor any other Secured Party shall have any obligation or liability under any of such agreements by reason of or arising out of this Agreement or any other document related thereto nor shall the Collateral Agent nor any other Secured Party have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation

to take any action to collect or enforce any rights under any agreement included in the Collateral; and (iii) the exercise by the Collateral Agent of any of its rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral.

## **SECTION 4. REPRESENTATIONS AND WARRANTIES AND COVENANTS.**

### **4.1 Generally.**

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and on the date of each Credit Extension, that:

(i) such Grantor owns each item of the Collateral free and clear of any and all Liens or claims, in each case except for Liens permitted under the Loan Documents.

(ii) it has indicated on Schedule 4.1(A): (A) the type of organization of such Grantor, (B) the jurisdiction of organization of such Grantor (it being agreed that the jurisdiction of organization of an unincorporated instrumentality of the Tribe shall be the Tribe), (C) its organizational identification number, if applicable, and (D) the jurisdiction where the chief executive office or its sole place of business is, and for the one-year period preceding the date hereof (or such shorter period as such Grantor has been in existence) has been, located;

(iii) the full legal name of such Grantor is as set forth on Schedule 4.1(A) and it has not done in the last five (5) years (or such shorter period as such Grantor has been in existence), and does not do, business under any other name (including any trade-name or fictitious business name) except for those names set forth on Schedule 4.1(B);

(iv) except as described on Schedule 4.1(C), it has not changed its jurisdiction of organization, chief executive office or sole place of business or its corporate structure in any way (e.g., by merger, consolidation, change in corporate form or otherwise) within the past five (5) years (or such shorter period as such Grantor has been in existence);

(v) it has not within the last five (5) years (or such shorter period as such Grantor has been in existence) become bound as debtor under a security agreement entered into by another Person, which has not heretofore been terminated, other than the agreements identified on Schedule 4.1(D);

(vi) with respect to each agreement identified on Schedule 4.1(D), it has indicated on Schedules 4.1(A) and (B) the information required pursuant to Sections 4.1(a)(ii), (iii), and (iv) with respect to the debtor under such agreement;

(vii) (A) upon the filing of all UCC financing statements naming each Grantor as “debtor” and the Collateral Agent as “secured party” and describing the Collateral in the filing offices set forth opposite such Grantor’s name on Schedule 4.1(E) and other filings delivered by each such Grantor; (B) upon delivery of all Instruments, Chattel Paper and Pledged Debt; (C) upon sufficient identification of Commercial Tort Claims; (D) upon execution by all applicable parties thereto of an Account Control Agreement, a

Securities Account Control Agreement or any other control agreement establishing the Collateral Agent's "control" (within the meaning of Section 8-106, 9-106 or 9-104 of the UCC, as applicable) with respect to any Investment Account; (E) upon consent of the issuer with respect to Letter-of-Credit Rights; (F) to the extent not subject to Article 9 of the UCC, upon recordation of the security interests granted hereunder in Patents, Trademarks and Copyrights in the applicable intellectual property registries, including but not limited to the United States Patent and Trademark Office and the United States Copyright Office; and (G) in the case of Money, upon the Collateral Agent taking possession of such Money, in each case other than with respect to assets that are Excluded Assets, the security interests granted to the Collateral Agent hereunder constitute valid and perfected first priority Liens on all of the Collateral (other than (x) motor vehicles, and (y) any Intellectual Property arising under laws other than that of the United States);

(viii) all actions and consents, including all filings, notices, registrations and recordings necessary or desirable for the exercise by the Collateral Agent of the voting or other rights provided for in this Agreement or the exercise of remedies in respect of the Collateral have been made or obtained;

(ix) other than the financing statements filed in favor of the Collateral Agent, no effective UCC financing statement, fixture filing or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing or recording office except for (A) financing statements for which proper termination statements have been delivered to the Collateral Agent for filing and (B) financing statements permitted to be filed by the Loan Documents in connection with Liens permitted under the Loan Documents, including, without limitation, financing statements filed in connection with other security agreements identified on Schedule 4.1(D);

(x) no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body is required for either (A) the pledge or grant by any Grantor of the Liens purported to be created in favor of the Collateral Agent hereunder (other than such authorizations, approvals or actions obtained on or prior to the date hereof) or (B) subject to Section 11.3, the exercise by the Collateral Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created hereunder or created or provided for by applicable law), except (y) for the filings and approvals contemplated by clause (vii) above and (z) as may be required in connection with the disposition of any Investment Related Property by laws generally affecting the offering and sale of securities;

(xi) all information supplied by any Grantor with respect to the Collateral is accurate and complete in all material respects;

(xii) except as described on Schedule 4.1(F), none of the Collateral constitutes, or is the Proceeds of, "farm products" (as defined in the UCC);

(xiii) except as described on Schedule 4.1(G), it does not own any "as extracted collateral" (as defined in the UCC) or any timber to be cut;

(xiv) except as described on Schedule 4.1(D), no Grantor has become bound as a debtor, either by contract or by operation of law, by a security agreement previously entered into by another Person;

(xv) each Grantor has been duly organized as an entity of the type as set forth opposite such Grantor's name on Schedule 4.1(A) solely under the laws of the jurisdiction as set forth opposite such Grantor's name on Schedule 4.1(A) and, except as disclosed from time to time to the Collateral Agent in writing, remains duly existing as such, and no such Grantor has filed any certificates of domestication, transfer or continuance in any other jurisdiction; and

(xvi) other than licenses, permits, authorizations and real property described in the definition of Excluded Assets, the Excluded Assets are not material to the business of any Grantor.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) except for the security interest created by this Agreement, it shall not create or suffer to exist any Lien upon or with respect to any of the Collateral except for Liens permitted by the Loan Documents;

(ii) it shall not produce, use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral;

(iii) it shall not change such Grantor's name, identity, corporate structure (e.g., by merger, consolidation, change in corporate form or otherwise), sole place of business, chief executive office, type of organization or jurisdiction of organization or establish any trade names unless it shall have (A) notified the Collateral Agent in writing, by executing and delivering to the Collateral Agent a completed Security Agreement Supplement at least ten (10) days prior to any such change or establishment, identifying such new proposed name, identity, structure, sole place of business, chief executive office, type of organization, jurisdiction of organization or trade name and providing such other information in connection therewith as the Collateral Agent may reasonably request and (B) taken all actions necessary or advisable to maintain the continuous validity, perfection and the same or better priority of the Collateral Agent's security interest in the Collateral intended to be granted and agreed to hereby;

(iv) it shall pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, the Collateral, except to the extent the validity thereof is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted and so long as (x) adequate reserves or other appropriate provisions, as shall be required in conformity with GAAP, shall have been made therefor, (y) such contest operates to suspend collection of the contested taxes, assessments, governmental charges or levies or claims (including the sale of any portion of the Collateral to satisfy such tax, assessment, governmental charge or levy or claim) and

enforcement of any Lien against any of the Collateral, and (z) the failure to so pay could not reasonably be expected to result in a Material Adverse Effect; provided, such Grantor shall in any event pay such taxes, assessments, charges, levies or claims not later than five (5) days prior to the date of any proposed sale under any judgment, writ or warrant of attachment entered or filed against such Grantor or any of the Collateral as a result of the failure to make such payment;

(v) it shall not sell, transfer or assign (by operation of law or otherwise) any Collateral except in accordance with the Credit Agreement; and

(vi) except as specifically permitted in the Credit Agreement, it shall not take or permit any action which could impair the Collateral Agent's rights in the Collateral.

#### **4.2 Equipment and Inventory**

(a) Representations and Warranties. Each Grantor represents and warrants, on the Closing Date and on the date of each Credit Extension that:

(i) all of the Equipment and Inventory included in the Collateral (other than such Equipment and Inventory that is in transit) is located only at the locations specified in Schedule 4.2; and

(ii) none of the Equipment or Inventory included in the Collateral (other than such Equipment and Inventory that is in transit) is in the possession of an issuer of a warehouse receipt, bill of lading or other document of title that is "negotiable" (as described in Section 7-104 of the UCC) (a "**Negotiable Document**") therefor or otherwise in the possession of a bailee or a warehouseman, except to the extent such Grantor shall be in compliance with Section 4.2(b)(iv) with respect to such Equipment or Inventory.

(b) Covenants and Agreements. Each Grantor covenants and agrees that:

(i) except with respect to property having a value of less than \$500,000 in the aggregate (across all Grantors) and any property that is in transit, it shall keep the Equipment, Inventory and any Documents evidencing any Equipment and Inventory in the locations specified in Schedule 4.2 unless it shall have (A) notified the Collateral Agent in writing, by executing and delivering to the Collateral Agent a completed Security Agreement Supplement at least ten (10) days prior to any change in locations, identifying such new locations and providing such other information in connection therewith as the Collateral Agent may reasonably request and (B) taken all actions necessary or advisable to maintain the continuous validity, perfection and the same or better priority of the Collateral Agent's security interest in the Collateral intended to be granted and agreed to hereby, or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder, with respect to such Equipment and Inventory;

(ii) it shall keep correct and accurate records of all of its material Inventory in conformity with GAAP;

(iii) it shall not deliver any Negotiable Document evidencing any Equipment and Inventory to any Person other than the issuer of such Negotiable Document to claim the Goods evidenced therefor or the Collateral Agent; and

(iv) if any Equipment or Inventory owned by a Grantor having a fair market value in excess of \$500,000 in the aggregate is in possession or control of any third party (other than Equipment or Inventory under repair or restoration by any such third party), such Grantor shall join with the Collateral Agent in notifying the third party of the Collateral Agent's security interest and take commercially reasonable actions to obtain an acknowledgement from the third party that it is holding the Equipment and Inventory for the benefit of the Collateral Agent, subordinates its bailee's lien to the Lien of the Collateral Agent in respect of such Equipment or Inventory and will provide access to the Collateral Agent to exercise its remedies in respect of such Equipment and Inventory; and

(v) with respect to any item of Equipment having a depreciated book value in excess of \$500,000 in the aggregate which is covered by a certificate of title under a statute of any jurisdiction under the law of which indication of a security interest on such certificate is required as a condition of perfection thereof, upon the reasonable request of the Collateral Agent, (A) provide information with respect to any such Equipment, (B) execute and file with the registrar of motor vehicles or other appropriate authority in such jurisdiction an application or other document requesting the notation or other indication of the security interest created hereunder on such certificate of title, and (C) deliver to the Collateral Agent copies of all such applications or other documents filed during such fiscal quarter and copies of all such certificates of title issued during such fiscal quarter indicating the security interest created hereunder in the items of Equipment covered thereby.

#### **4.3 Receivables.**

(a) Representations and Warranties. Each Grantor represents and warrants on the Closing Date and on the date of each Credit Extension, that:

(i) none of the Account Debtors in respect of any Receivable is the government of the United States, any agency or instrumentality thereof, any state or municipality or any foreign sovereign. No Receivable requires the consent of the Account Debtor in respect thereof in connection with the pledge hereunder, except any consent which has been obtained;

(ii) no Receivable is evidenced by, or constitutes, an Instrument or Chattel Paper which has not been delivered to, or otherwise subjected to the control of, the Collateral Agent to the extent required by, and in accordance with Section 4.3(c); and

(iii) each Grantor has delivered to the Collateral Agent a complete and correct copy of each material standard form of document under which a Receivable may arise.

(b) Covenants and Agreements: Each Grantor hereby covenants and agrees that:

(i) it shall keep and maintain at its own cost and expense satisfactory and complete records of the Receivables, including, but not limited to, the originals of all documentation with respect to all Receivables and records of all payments received and all credits granted on the Receivables, all merchandise returned and all other dealings therewith;

(ii) it shall mark conspicuously, in form and manner reasonably satisfactory to the Collateral Agent, all Chattel Paper, Instruments and other evidence of Receivables (other than any delivered to the Collateral Agent as provided herein), as well as the Receivables Records with an appropriate reference to the fact that the Collateral Agent has a security interest therein;

(iii) other than in the prudent conduct of its business, and except as otherwise provided in subsection (iv) below, during the continuance of an Event of Default, such Grantor shall not (A) grant any extension or renewal of the time of payment of any Receivable; (B) compromise or settle any dispute, claim or legal proceeding with respect to any Receivable for less than the total unpaid balance thereof; (C) release, wholly or partially, any Person liable for the payment thereof; or (D) allow any credit or discount thereon;

(iv) except as otherwise provided in this Section 4.3(b), each Grantor shall continue to collect all amounts due or to become due to such Grantor under the Receivables and any Supporting Obligation at its own expense and in accordance with customary practice in the gaming industry, as applicable. Notwithstanding the foregoing, subject to Section 11.3, the Collateral Agent shall have the right at any time to notify, or require any Grantor to notify, any Account Debtor of the Collateral Agent's security interest in the Receivables and any Supporting Obligation and, in addition, at any time following the occurrence and during the continuation of an Event of Default, and subject to Section 11.3, the Collateral Agent may: (A) direct the Account Debtors under any Receivables to make payment of all amounts due or to become due to such Grantor thereunder directly to the Collateral Agent; (B) notify, or require any Grantor to notify, each Person maintaining a lockbox or similar arrangement to which Account Debtors under any Receivables have been directed to make payment to remit all amounts representing collections on checks and other payment items from time to time sent to or deposited in such lockbox or other arrangement directly to the Collateral Agent; and (C) enforce, at the expense of such Grantor, collection of any such Receivables and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done. If the Collateral Agent notifies any Grantor that it has elected to collect the Receivables in accordance with the preceding sentence, any payments of Receivables received by such Grantor shall be forthwith (and in any event within two (2) Business Days) deposited by such Grantor in the exact form received, duly indorsed by such Grantor to the Collateral Agent if required, in an Investment Account "controlled" (for purposes of the UCC) by the Collateral Agent (it being understood that each Grantor agrees to promptly comply with any reasonable request of the Collateral Agent to establish or enter into an Account Control Agreement or a Securities Account Control Agreement with respect to such an Investment Account), and until so turned over, all amounts and proceeds (including checks and other instruments) received by such



Grantor in respect of the Receivables, any Supporting Obligation or Collateral Support shall be received in trust for the benefit of the Collateral Agent hereunder and shall be segregated from other funds of such Grantor and such Grantor shall not adjust, settle or compromise the amount or payment of any Receivable, or release wholly or partly any Account Debtor or obligor thereof, or allow any credit or discount thereon; and

(v) it shall use its commercially reasonable best efforts to keep in full force and effect any Supporting Obligation or Collateral Support relating to any Receivable in excess of \$100,000.

(c) Delivery and Control of Receivables. With respect to any Receivables (other than (i) such Receivables generated by casino patrons in the ordinary course of gaming activities and (ii) other such Receivables in an amount no greater than \$100,000 individually or \$250,000 in the aggregate (across all Grantors)) that are evidenced by, or constitute, Chattel Paper or Instruments, each Grantor shall cause the executed original of such item to be delivered to the Collateral Agent (or its agent or designee) appropriately indorsed to the Collateral Agent or indorsed in blank: (A) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof and (B) with respect to any such Receivables hereafter arising within ten (10) days of such Grantor acquiring rights therein. With respect to any Receivables (other than (i) such Receivables generated by casino patrons in the ordinary course of gaming activities and (ii) other such Receivables in an amount no greater than \$100,000 individually or \$250,000 in the aggregate (across all Grantors)) which would constitute “electronic chattel paper” under Article 9 of the UCC, each Grantor shall take all steps necessary to give the Collateral Agent control over such Receivables (within the meaning of Section 9-105 of the UCC): (A) with respect to any such Receivables in existence on the date hereof, on or prior to the date hereof and (B) with respect to any such Receivables hereafter arising within ten (10) days of such Grantor acquiring the rights therein. Any Receivable not otherwise required to be delivered or subjected to the control of the Collateral Agent in accordance with this subsection (c) shall be delivered or subjected to such control upon reasonable request of the Collateral Agent.

#### **4.4 Investment Related Property.**

##### **4.4.1 Investment Related Property Generally.**

(a) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) in the event it acquires rights in any Investment Related Property after the date hereof, it shall deliver to the Collateral Agent immediately following any such acquisition, a completed Security Agreement Supplement reflecting such new Investment Related Property and all other Investment Related Property. Notwithstanding the foregoing, it is understood and agreed that the security interest of the Collateral Agent shall attach to all Investment Related Property immediately upon any Grantor’s acquisition of rights therein and shall not be affected by the failure of any Grantor to deliver a supplement to Schedule 4.4 as required hereby;

(ii) except as provided in the next sentence, in the event such Grantor receives any dividends, interest or distributions on any Investment Related Property, or any

securities or other property upon the merger, consolidation, liquidation or dissolution of any issuer of any Investment Related Property, then (A) such dividends, interest or distributions and securities or other property shall be included in the definition of Collateral without further action and (B) such Grantor shall promptly take all actions, if any, necessary or advisable to ensure the validity, perfection, the same or better priority and, if applicable, control of the Collateral Agent over such Investment Related Property (including, without limitation, “delivery” (as defined in Section 8-301 of the UCC) thereof to the Collateral Agent) intended to be granted and agreed to hereby and pending any such action such Grantor shall be deemed to hold such dividends, interest, distributions, securities or other property in trust for the benefit of the Collateral Agent and shall segregate such dividends, distributions, securities or other property from all other property of such Grantor. Notwithstanding the foregoing, so long as no Event of Default shall have occurred and be continuing, the Collateral Agent authorizes each Grantor to retain all ordinary cash dividends and distributions paid in the normal course of the business of the issuer and consistent with the past practice of the issuer and all payments of principal and interest; and

(iii) each Grantor consents to the grant by each other Grantor of a security interest in all Investment Related Property to the Collateral Agent.

(b) Delivery and Control.

With respect to any Investment Related Property that is represented by a certificate or that is an “instrument” (other than (i) any such Investment Related Property credited to a Securities Account and (ii) instruments generated by casino patrons in the ordinary course of gaming activities), it shall cause such certificate or instrument to be “delivered” (as defined in Section 8-301 of the UCC) to the Collateral Agent, indorsed in blank by an “effective endorsement” (as defined in Section 8-107 of the UCC) , regardless of whether such certificate constitutes a “certificated security” for purposes of the UCC. With respect to any Investment Related Property that is an “uncertificated security” for purposes of the UCC (other than any “uncertificated securities” credited to a Securities Account), it shall cause the issuer of such uncertificated security to either (A) register the Collateral Agent as the registered owner thereof on the books and records of the issuer or (B) execute an agreement substantially in the form of Exhibit D, pursuant to which such issuer agrees to comply with the Collateral Agent’s instructions with respect to such uncertificated security without further consent by such Grantor.

(c) Voting and Distributions.

(i) So long as no Event of Default shall have occurred and be continuing:

(A) except as otherwise provided under the covenants and agreements relating to Investment Related Property in this Agreement or in the Credit Agreement or in the other Loan Documents, each Grantor shall be entitled to exercise or refrain from exercising any and all voting and other consensual rights pertaining to the Investment Related Property or any part thereof for any purpose not inconsistent with the terms of this Agreement, the Credit Agreement or the other Loan Documents; provided, no such

Grantor shall exercise or refrain from exercising any such right to the extent such exercise or refrain would violate the Credit Agreement or the other Loan Documents; and

(B) the Collateral Agent shall promptly execute and deliver (or cause to be executed and delivered) to each Grantor all proxies and other instruments as such Grantor may from time to time reasonably request for the purpose of enabling such Grantor to exercise the voting and other consensual rights when and to the extent which it is entitled to exercise pursuant to clause (A) above.

(ii) Upon the occurrence and during the continuation of an Event of Default, in each case subject to the provisions of Section 11.3:

(A) other than with respect to Management Activities prohibited by Section 11.3, all rights of each Grantor to exercise or refrain from exercising the voting and other consensual rights which it would otherwise be entitled to exercise pursuant hereto shall cease and all such rights shall thereupon become vested in the Collateral Agent who shall thereupon have the sole right to exercise or refrain from exercising such voting and other consensual rights; and

(B) in order to permit the Collateral Agent to exercise the voting and other consensual rights which are not Management Activities prohibited by Section 11.3 and which it may be entitled to exercise pursuant hereto and to receive all dividends and other distributions which it may be entitled to receive hereunder: (y) each Grantor shall promptly execute and deliver (or cause to be executed and delivered) to the Collateral Agent all proxies, dividend payment orders and other instruments as the Collateral Agent may from time to time reasonably request and (z) each Grantor acknowledges that the Collateral Agent may utilize the power of attorney set forth in Section 6.1.

(d) Certain Permitted Actions to Protect Investment Related Property.

In addition to the foregoing, if any issuer of any Investment Related Property is located in a jurisdiction outside of the United States, each Grantor shall promptly notify the Collateral Agent thereof and take, upon the request of the Collateral Agent, such additional actions, including, without limitation, causing the issuer to register the pledge on its books and records or making such filings or recordings, in each case as may be necessary or advisable, under the laws of such issuer's jurisdiction to insure the validity, perfection and priority of the security interest of the Collateral Agent. Upon the occurrence of an Event of Default, but subject to Section 11.3, the Collateral Agent shall have the right, without notice to any Grantor, to transfer all or any portion of the Investment Related Property to its name or the name of its nominee or agent. In addition, the Collateral Agent shall have the right at any time, without notice to any Grantor, to exchange any certificates or instruments representing any Investment Related Property for certificates or instruments of smaller or larger denominations.

#### **4.4.2 Equity Interests.**

Each Grantor hereby represents and warrants that, on the Closing Date and the date of each Credit Extension, except as set forth on Schedule 4.4(A), it has not acquired any Equity

Interests of another entity or substantially all the assets of another entity within the past five (5) years.

#### **4.4.3 Pledged Debt**

Each Grantor hereby represents and warrants that (a) on the Closing Date and the date of each Credit Extension, Schedule 4.4(B) sets forth under the heading “Pledged Debt” all of the Pledged Debt owned by any Grantor and (b) all of its Pledged Debt has been duly authorized, authenticated or issued, and delivered and is the legal, valid and binding obligation of the issuers thereof and is not in default.

#### **4.4.4 Investment Accounts**

(a) Representations and Warranties. Each Grantor represents and warrants, on the Closing Date and on the date of each Credit Extension that:

(i) Schedules 4.4(C) and (D) set forth under the headings “Securities Accounts” and “Commodities Accounts,” respectively, all of the Securities Accounts and Commodities Accounts in which each Grantor has an interest;

(ii) each Grantor is the sole entitlement holder of each of its Securities Accounts and Commodity Accounts, and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Collateral Agent pursuant hereto and pursuant to the Securities Account Control Agreement) having “control” (within the meanings of Sections 8-106 and 9-106 of the UCC) over, or any other interest in, any such Securities Account or Commodity Account or securities or other property credited thereto;

(iii) Schedule 4.4(E) sets forth under the headings “Deposit Accounts” all of the Deposit Accounts in which each Grantor has an interest;

(iv) each Grantor is the sole account holder of each of its Deposit Accounts and such Grantor has not consented to, and is not otherwise aware of, any Person (other than the Collateral Agent pursuant hereto, and pursuant to the Account Control Agreement, any Person as a result of a Lien permitted by the Loan Documents and the applicable depository institution) having “control” (within the meaning of Section 9-104 of the UCC) over, or any other interest in, any such Deposit Account or any money or other property deposited therein; and

(v) each Grantor has taken all actions (within the time requirements specified by the Credit Agreement and the other Loan Documents to the extent expressly provided therein) necessary or desirable, including those specified in Section 4.4.4(b), to: (A) establish Collateral Agent’s “control” (within the meanings of Sections 8-106 and 9-106 of the UCC) over any portion of the Investment Related Property constituting Certificated Securities, Uncertificated Securities, Securities Accounts, Securities Entitlements or Commodities Accounts (each as defined in the UCC); (B) establish the Collateral Agent’s “control” (within the meaning of Section 9-104 of the UCC) over all

Deposit Accounts; and (C) deliver all Instruments to the Collateral Agent, in each case except to the extent constituting Excluded Assets.

(b) Delivery and Control.

With respect to any Investment Related Property consisting of Securities Accounts or Securities Entitlements (other than accounts solely holding Cash or Cash Equivalents not required to be deposited into Investment Accounts pursuant to the Loan Documents), each Grantor shall cause the securities intermediary maintaining such Securities Account or Securities Entitlement to enter into an agreement in the form of the Securities Account Control Agreement which is effective to establish “control” under the UCC pursuant to which it shall agree to comply with the Collateral Agent’s “entitlement orders” without further consent by such Grantor. With respect to any Investment Related Property that is a Deposit Account (other than Payroll Accounts and accounts solely holding Cash or Cash Equivalents not required to be deposited into Investment Accounts pursuant to the Loan Documents), each Grantor shall cause the depository institution maintaining such account to enter into an agreement in the form of the Account Control Agreement which is effective to establish “control” under the UCC, pursuant to which the Collateral Agent shall have “control” (within the meaning of Section 9-104 of the UCC) over such Deposit Account. Each Grantor shall have entered into such control agreement or agreements with respect to: (A) any Securities Accounts, Securities Entitlements or Deposit Accounts that exist on the date of any Credit Extension, as of or prior to such date and (B) any Securities Accounts, Securities Entitlements or Deposit Accounts that are created or acquired after the date of any Credit Extension, as of or prior to the deposit or transfer of any such Securities Entitlements or funds, whether constituting moneys or investments, into such Securities Accounts or Deposit Accounts, in each case except with respect to Payroll Accounts. In the case of any Investment Account, so long as no Event of Default has occurred and is continuing, the Collateral Agent agrees, subject to the terms of the Credit Agreement and the other Loan Documents, that it shall not give any orders or instructions to any applicable depository institution or securities intermediary concerning or directing the disposition, transfer, withdrawal, disbursement or investment of any funds in or credited to such Investment Account.

#### **4.5 Material Contracts**

(a) Representations and Warranties. Each Grantor hereby represents and warrants that, on the Closing Date and the date of each Credit Extension that:

(i) Schedule 4.5 sets forth all of the Material Contracts to which such Grantor has rights;

(ii) the Material Contracts, true and complete copies (including any amendments or supplements thereof) of which have been furnished to the Collateral Agent, have been duly authorized, executed and delivered by all parties thereto, are in full force and effect and are binding upon and enforceable against all parties thereto in accordance with their respective terms. There exists no material default under any Material Contract by such Grantor nor, to such Grantor’s knowledge, any other party thereto and neither such Grantor, nor, to such Grantor’s knowledge, any other Person party thereto, is likely to become in material default thereunder and no Person party

thereto has any defenses, counterclaims or right of set-off with respect to any Material Contract; and

(iii) other than as set forth on Schedule 4.5, no Material Contract prohibits assignment or requires consent of or notice to any Person in connection with the assignment to the Collateral Agent hereunder, except such as has been given or made.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that:

(i) in addition to any rights under the Section of this Agreement relating to Receivables, the Collateral Agent may at any time notify, or require any Grantor to so notify, the counterparty on any Material Contract of the security interest of the Collateral Agent therein. In addition, after the occurrence and during the continuance of an Event of Default, the Collateral Agent may upon written notice to the applicable Grantor, notify, or require any Grantor to notify, the counterparty to make all payments under the Material Contracts directly to the Collateral Agent;

(ii) each Grantor shall deliver promptly to the Collateral Agent a copy of each material demand, notice or document received by it relating in any way to any Material Contract; and

(iii) upon request by the Collateral Agent, it shall use commercially reasonable efforts to cause each Person party to a Material Contract (other than any other Grantor) to execute and deliver to the Collateral Agent a consent to the assignment for security of such Material Contract to the Collateral Agent.

#### **4.6 Letter-of-Credit Rights**

(a) Representations and Warranties. Each Grantor hereby represents and warrants that, on the Closing Date and the date of each Credit Extension, that:

(i) all letters of credit in excess of \$100,000 to which such Grantor has Letter-of-Credit Rights, or pursuant to which such Grantor is the beneficiary, are listed on Schedule 4.6; and

(ii) it has obtained the consent of each issuer of any letter of credit listed on Schedule 4.6 in excess of \$100,000 to the assignment of the proceeds of such letter of credit to the Collateral Agent.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any letter of credit in excess of \$500,000 hereinafter arising, to which such Grantor has Letter-of-Credit Rights, or pursuant to which such Grantor is the beneficiary, it shall obtain the consent of the issuer thereof to the assignment of the proceeds of the letter of credit to the Collateral Agent and shall deliver to the Collateral Agent a completed Security Agreement Supplement.

#### **4.7 Intellectual Property.**

(a) Representations and Warranties. Each Grantor hereby represents and warrants that, on the Closing Date and the date of each Credit Extension that:

(i) Schedule 4.7 sets forth a true and complete list of (A) all United States, state and foreign registrations of and applications for Patents, Trademarks, and Copyrights owned by each Grantor and (B) all Patent Licenses, Trademark Licenses, Trade Secret Licenses and Copyright Licenses material to the business of such Grantor;

(ii) it is the owner of the entire right, title, and interest in and to all Intellectual Property listed under its name on Schedule 4.7, and owns or has the valid right to use all other Intellectual Property used in or necessary to conduct its business, free and clear of all Liens, claims, encumbrances and licenses, except for Liens permitted under the Loan Documents and the licenses set forth on Schedule 4.7(B), (D), (F) and (G);

(iii) except to the extent not material to its business, all Intellectual Property is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and each Grantor has performed all acts and has paid all renewal, maintenance, and other fees and taxes required to maintain each and every registration and application of Copyrights, Patents and Trademarks in full force and effect;

(iv) except to the extent not reasonably likely to have a Material Adverse Effect, (A) all Intellectual Property is valid and enforceable, (B) no holding, decision, or judgment has been rendered in any action or proceeding before any court or administrative authority challenging the validity of, such Grantor's right to register, or such Grantor's rights to own or use, any Intellectual Property and (C) no such action or proceeding is pending or, to the best of such Grantor's knowledge, threatened;

(v) all registrations and applications for Copyrights, Patents and Trademarks material to the Borrower and the other Grantors, taken as a whole, are standing in the name of a Grantor and none of such Trademarks, Patents or Copyrights has been licensed by any Grantor to any Affiliate or third party, except as disclosed in Schedule 4.7(B), (D), (F) and (G);

(vi) except to the extent not material to its business, each Grantor has been using appropriate statutory notice of registration in connection with its use of registered Trademarks, proper marking practices in connection with the use of Patents, and appropriate notice of copyright in connection with the publication of Copyrights;

(vii) the conduct of such Grantor's business does not infringe upon or otherwise violate any trademark, patent, copyright, trade secret or other intellectual property right owned or controlled by a third party and no claim has been made that the use of any Intellectual Property owned or used by any Grantor (or any of its respective licensees) violates the asserted rights of any third party;

(viii) except to the extent not reasonably likely to have a Material Adverse Effect, to each Grantor's knowledge, no third party is infringing upon or otherwise violating any rights in any Intellectual Property owned or used by such Grantor, or any of its respective licensees; and

(ix) except to the extent not reasonably likely to have a Material Adverse Effect, no settlement or consents, covenants not to sue, nonassertion assurances, or releases have been entered into by any Grantor or to which any Grantor is bound that adversely affect any Grantor's rights to own or use any Intellectual Property.

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees as follows:

(i) except to the extent not material to its business, it shall not do any act or omit to do any act whereby any of the Intellectual Property of any Grantor may lapse, or become abandoned, dedicated to the public, or unenforceable, or which would adversely affect the validity, grant or enforceability of the security interest granted herein;

(ii) it shall not, with respect to any Trademarks which are material to the business of any Grantor, cease the use of any of such Trademarks or fail to maintain the level of the quality of products sold and services rendered under any of such Trademark at a level at least substantially consistent with the quality of such products and services as of the date hereof, and each Grantor shall take all steps reasonably necessary to ensure that licensees of such Trademarks use such consistent standards of quality;

(iii) it shall, within thirty (30) days of the creation or acquisition of any copyrightable work which is material to the business of any Grantor, apply to register the Copyright in the United States Copyright Office;

(iv) it shall promptly notify the Collateral Agent if it knows or has reason to know that any item of the Intellectual Property that is material to the business of any Grantor may become (a) abandoned or dedicated to the public or placed in the public domain, (b) invalid or unenforceable, or (c) subject to any adverse determination or development (including the institution of proceedings) in any action or proceeding in the United States Patent and Trademark Office, the United States Copyright Office, any state registry, any foreign counterpart of the foregoing, or any court;

(v) it shall take all reasonable steps in the United States Patent and Trademark Office, the United States Copyright Office, any state registry or any foreign counterpart of the foregoing, to pursue any application and maintain any registration of each Trademark, Patent, and Copyright owned by any Grantor and material to its business which is now or shall become included in the Intellectual Property including, but not limited to, those items on Schedule 4.7;

(vi) in the event that any Intellectual Property owned by or exclusively licensed to any Grantor that is material to its business is infringed, misappropriated, or diluted by a third party, such Grantor shall promptly take all reasonable actions to stop such infringement, misappropriation, or dilution and protect its rights in such Intellectual Property including, but not limited to, the initiation of a suit for injunctive relief and to recover damages;

(vii) it shall promptly report to the Collateral Agent (A) the filing of any application to register any Intellectual Property with the United States Patent and



Trademark Office, the United States Copyright Office, or any state registry or foreign counterpart of the foregoing (whether such application is filed by such Grantor or through any agent, employee, licensee, or designee thereof) and (B) the registration of any Intellectual Property by any such office, in each case by executing and delivering to the Collateral Agent a completed Security Agreement Supplement;

(viii) it shall, promptly upon the reasonable request of the Collateral Agent, execute and deliver to the Collateral Agent any document required to acknowledge, confirm, register, record, or perfect the Collateral Agent's interest in any part of the Intellectual Property, whether now owned or hereafter acquired; and

(ix) except for Liens permitted under the Loan Documents, each Grantor shall not execute, and there will not be on file in any public office, any financing statement or other document or instruments, except financing statements or other documents or instruments filed or to be filed in favor of the Collateral Agent and each Grantor shall not sell, assign, transfer, grant any option, or create or suffer to exist any Lien upon or with respect to the Intellectual Property, except for the Lien created by and under this Agreement and the other Loan Documents.

#### **4.8 Commercial Tort Claims.**

(a) Representations and Warranties. Each Grantor hereby represents and warrants, on the Closing Date and on the date of each Credit Extension, that Schedule 4.8 sets forth all Commercial Tort Claims of each Grantor in excess of \$100,000 individually and \$250,000 in the aggregate (across all Grantors); and

(b) Covenants and Agreements. Each Grantor hereby covenants and agrees that with respect to any Commercial Tort Claim hereafter arising it shall deliver to the Collateral Agent a completed Security Agreement Supplement identifying such new Commercial Tort Claims in excess of \$100,000 individually and \$250,000 in the aggregate (across all Grantors).

**4.9 Pledged Revenues.** Each Grantor hereby covenants and agrees that it shall cause all Pledged Revenues consisting of cash and Cash Equivalents, other than cash and Cash Equivalents permitted by Section 6.19 of the Credit Agreement to be excluded from deposit in any Deposit Account or Securities Account, to be deposited into, and maintained in, a Deposit Account or Securities Account.

**4.10 Perfection of *De Minimis* Collateral.** Notwithstanding anything to the contrary in this Section 4, the Grantors shall not be required to perfect any security interest granted to the Collateral Agent (including with respect to vehicles) as to which the Collateral Agent has determined in its sole discretion that the collateral value thereof is insufficient to justify the difficulty, time and/or expense of obtaining a perfected security interest therein.

#### **SECTION 5. ACCESS; RIGHT OF INSPECTION AND FURTHER ASSURANCES; ADDITIONAL GRANTORS.**

**5.1 Access; Right of Inspection.** Each Grantor shall, at any reasonable time, upon reasonably prior request by the Collateral Agent, allow inspection of the Collateral by the Collateral Agent, or persons designated by the Collateral Agent.

**5.2 Further Assurances.**

(a) Each Grantor agrees that from time to time, at the expense of such Grantor, it shall promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or reasonably desirable, or that the Collateral Agent may reasonably request, subject to Section 11.3, in order to create and/or maintain the validity, perfection or priority of and protect any security interest granted or intended to be granted hereby or, upon the occurrence and during the continuance of an Event of Default, to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, each Grantor shall, in each case subject to Section 11.3:

(i) file such financing or continuation statements, or amendments thereto, and execute and deliver such other agreements, instruments, endorsements, powers of attorney or notices, as may be necessary or reasonably desirable, or as the Collateral Agent may reasonably request, in order to perfect and preserve the security interests granted or purported to be granted hereby;

(ii) take all actions necessary to ensure the recordation of appropriate evidence of the liens and security interest granted hereunder in the Intellectual Property with any intellectual property registry in which said Intellectual Property is registered or in which an application for registration is pending including, without limitation, the United States Patent and Trademark Office, the United States Copyright Office, the various Secretaries of State, and the foreign counterparts on any of the foregoing;

(iii) upon the existence and during the continuation of an Event of Default, upon request by the Collateral Agent, assemble the Collateral; and

(iv) at the Collateral Agent's reasonable request, appear in and defend any action or proceeding that may affect such Grantor's title to or the Collateral Agent's security interest in all or any part of the Collateral.

(b) Each Grantor hereby authorizes the Collateral Agent to file a Record or Records, including, without limitation, financing or continuation statements, and amendments thereto, in any jurisdictions and with any filing offices as the Collateral Agent may determine, in its sole discretion, are necessary or advisable to perfect the security interest granted to the Collateral Agent herein. Such financing statements may describe the Collateral in the same manner as described herein or may contain an indication or description of collateral that describes such property in any other manner as the Collateral Agent may determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the Collateral granted to the Collateral Agent herein, including, without limitation, describing such property as "all assets" or "all personal property, whether now owned or hereafter acquired." Each Grantor shall furnish to the Collateral Agent from time to time statements and schedules further

identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in reasonable detail. Notwithstanding the foregoing or any other term or provision herein, the Collateral Agent shall be under no obligation whatsoever to prepare or file any financing or confirmation statements or record any documents or instruments in any public office at any time or times or otherwise to perfect or maintain the perfection of any security interest in the Collateral.

**5.3 Additional Grantors.** From time to time subsequent to the date hereof, additional persons may become parties hereto as additional Grantors (each, an “**Additional Grantor**”), by executing a Joinder Agreement, together with a Security Agreement Supplement and any other attachments, all in form and substance reasonably satisfactory to the Collateral Agent. Upon delivery of any such Joinder Agreement to the Collateral Agent, notice of which is hereby waived by the other Grantors, each Additional Grantor shall be a Grantor and shall be as fully a party hereto as if such Additional Grantor were an original signatory hereto. Each Grantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Grantor hereunder, nor by any election of the Collateral Agent not to cause any other Person to become an Additional Grantor hereunder. This Agreement shall be fully effective as to each Grantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Grantor hereunder.

**5.4 Maintenance of Insurance.** Maintain liability, casualty and other insurance with respect to itself, the Gaming Business, the Casino Property and all Collateral as is required by the Compact and the Credit Agreement, and deliver evidence of insurance complying with such requirements at such times as required by the Credit Agreement. In the event the Borrower fails to obtain, maintain, or deliver to the Collateral Agent the policies (or certificates) of insurance with respect to the Borrower, the Gaming Business, the Casino Property and all Collateral required by the Compact and the Credit Agreement (including required endorsements), during the continuation of any Event of Default, the Collateral Agent may, but without any obligation to do so, maintain or procure the insurance required by the Compact and the Credit Agreement or single-interest insurance (if available for purchase) or alternative insurance for such risks protecting the Collateral Agent’s and the Secured Parties’ interests that the Gaming Business and the Casino Property be adequately insured (including, without limitation, insurance covering earthquake, fire and other customary risks to the Casino Property), and the Borrower shall pay all premiums, costs and expenses related thereto promptly upon demand by the Collateral Agent, and until such payment is made by the Borrower, such amounts shall bear interest from the date of demand at the rate applicable to Base Rate Loans under the Credit Agreement.

## **SECTION 6. COLLATERAL AGENT APPOINTED ATTORNEY-IN-FACT.**

**6.1 Power of Attorney.** Subject to Section 11.3, each Grantor hereby irrevocably appoints the Collateral Agent (such appointment being coupled with an interest) as such Grantor’s attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor, the Collateral Agent or otherwise, from time to time in the Collateral Agent’s discretion to take any action and to execute any instrument that the Collateral Agent may deem reasonably necessary or advisable to accomplish the purposes of this Agreement which is not a Management Activity prohibited by Section 11.3, including, without limitation, the following:

(a) upon the occurrence and during the continuance of any Event of Default, to ask for, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due or to become due under or in respect of any of the Collateral;

(b) upon the occurrence and during the continuance of any Event of Default, to receive, endorse and collect any drafts or other Instruments, Documents and Chattel Paper in connection with clause (b) above;

(c) upon the occurrence and during the continuance of any Event of Default, to file any claims or take any action or institute any proceedings that the Collateral Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Collateral Agent with respect to any of the Collateral;

(d) to prepare and file any UCC financing statements against such Grantor as debtor;

(e) to prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in the Intellectual Property in the name of such Grantor as debtor;

(f) except as otherwise limited by this Agreement or any other Loan Document to actions that may only be taken during a continuing Event of Default, to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement which are Non-Management Obligations, including, without limitation, access to pay or discharge taxes or Liens (other than Liens permitted under the Loan Documents) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Collateral Agent in its sole discretion, any such payments made by the Collateral Agent to become obligations of such Grantor to the Collateral Agent, due and payable immediately without demand;

(g) upon the occurrence and during the continuance of any Event of Default, generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Collateral Agent were the absolute owner thereof for all purposes; and

(h) except as otherwise limited by this Agreement or any other Loan Document to actions that may only be taken during a continuing Event of Default, to do, at the Collateral Agent's option and such Grantor's expense, at any time or from time to time, all acts and things which are not Management Activities that the Collateral Agent deems reasonably necessary to protect, preserve or realize upon the Collateral and the Collateral Agent's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

**6.2 No Duty on the Part of Collateral Agent or Secured Parties.** The powers conferred on the Collateral Agent hereunder are solely to protect the interests of the Secured Parties in the Collateral and shall not impose any duty upon the Collateral Agent or any Secured Party to exercise any such powers. The Collateral Agent and the Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be

responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

## **SECTION 7. REMEDIES.**

### **7.1 Generally.**

(a) If any Event of Default shall have occurred and be continuing, subject to Section 11.3, the Collateral Agent may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of the Collateral Agent on default under the New York UCC, the Secured Transactions Ordinance or any other Uniform Commercial Code (whether or not such commercial code applies to the affected Collateral) to collect, enforce or satisfy any Secured Obligations then owing, whether by acceleration or otherwise, which do not constitute Management Activities prohibited by Section 11.3, and also may pursue any of the following separately, successively or simultaneously:

(i) require any Grantor to, and each such Grantor to the same extent hereby agrees that it shall, at its expense and promptly upon request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place to be designated by the Collateral Agent that is reasonably convenient to both parties;

(ii) enter onto the property where any Collateral is located and take possession thereof with or without judicial process;

(iii) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Collateral Agent deems appropriate; and

(iv) without notice except as specified below or under the New York UCC, sell, assign, lease, license (on an exclusive or nonexclusive basis) or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable.

(b) The Collateral Agent or any Secured Party may be the purchaser of any or all of the Collateral at any public or private (to the extent the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) sale in accordance with the New York UCC and the Collateral Agent, as collateral agent for and representative of the Secured Parties, shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the New York UCC, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Collateral Agent at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of any Grantor, and each Grantor hereby waives (to the extent permitted by applicable law) all rights of

redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to such Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that it would not be commercially unreasonable for the Collateral Agent to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Each Grantor hereby waives any claims against the Collateral Agent arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale, even if the Collateral Agent accepts the first offer received and does not offer such Collateral to more than one offeree. If the proceeds of any sale or other disposition of the Collateral are insufficient to pay all the Secured Obligations, each Grantor shall be liable for the deficiency and the fees of any attorneys employed by the Collateral Agent to collect such deficiency. Each Grantor further agrees that a breach of any of the covenants contained in this Section 7.1(b) will cause irreparable injury to the Collateral Agent, that the Collateral Agent has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against such Grantor, and such Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Secured Obligations becoming due and payable prior to their stated maturities. Nothing in this Section 7.1(b) shall in any way alter the rights of the Collateral Agent hereunder.

(c) The Collateral Agent may sell the Collateral without giving any warranties as to the Collateral. The Collateral Agent may specifically disclaim or modify any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(d) The Collateral Agent shall have no obligation to marshal any of the Collateral.

(e) Nothing in this Agreement waives any duty of the Collateral Agent or any right of the Grantors which cannot be waived under Section 9-602 of the UCC or other mandatory provisions of applicable law.

(f) Notwithstanding anything in this Agreement or in any Account Control Agreement or Securities Account Control Agreement to the contrary, the Collateral Agent agrees that (i) it will not deliver a notice of control, notice of exclusive control, shifting control notice, activation notice, instructions or entitlement orders as to the disposition of any property subject to an Account Control Agreement or Securities Account Control Agreement or any similar notice (each a "Control Notice") under any Account Control Agreement or Securities Account Control Agreement unless an Event of Default has occurred and is continuing as of the date such Control Notice is sent to the applicable party and (ii) promptly upon the waiver of all Events of

Default, it will deliver a written notice from the Collateral Agent expressly terminating such Control Notice and restoring the Borrower's access to the accounts subject to such Account Control Agreement or Securities Account Control Agreement as such access existed prior to the delivery of such Control Notice. The foregoing agreement is between the Collateral Agent (on behalf of the Secured Parties) and the Borrower and each depositary or other party under an Account Control Agreement or Securities Account Control Agreement at all times shall comply with instructions originated by Collateral Agent directing disposition of the funds in the relevant accounts without further consent by the Borrower.

**7.2 Application of Proceeds.** All proceeds received by the Collateral Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral and (to the extent that the application thereof is not otherwise provided for in any other Loan Document) all other cash or proceeds received by the Collateral Agent for the benefit of the Secured Parties shall be applied in full or in part by the Collateral Agent against the Secured Non-Management Obligations in accordance with Section 8.03 of the Credit Agreement. For the avoidance of doubt, notwithstanding any other provision of any Loan Document to the contrary, no such payment received from any Grantor (other than the Borrower) that is not a Qualified ECP Guarantor shall be applied by the Administrative Agent or any other Secured Party to the payment of any Excluded Swap Obligations in respect of such Grantor.

**7.3 Sales on Credit.** If the Collateral Agent sells any of the Collateral upon credit, the applicable Grantor will be credited only with payments actually made by purchaser and received by the Collateral Agent and applied to indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, the Collateral Agent may resell the Collateral and such Grantor shall be credited with proceeds of the sale.

**7.4 Investment Accounts.** If any Event of Default shall have occurred and be continuing, the Collateral Agent may apply the balance from any Investment Account or instruct the bank at which any Investment Account is maintained to pay the balance of any Investment Account to or for the benefit of the Collateral Agent until the payment in full of the Secured Obligations.

**7.5 Investment Related Property.** Each Grantor recognizes that, by reason of certain prohibitions contained in the Securities Act, and applicable state securities laws, the Collateral Agent may be compelled, with respect to any sale of all or any part of the Investment Related Property conducted without prior registration or qualification of such Investment Related Property under the Securities Act and/or such state securities laws, to limit purchasers to those who will agree, among other things, to acquire the Investment Related Property for their own account, for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges that any such private sale may be at prices and on terms less favorable than those obtainable through a public sale without such restrictions (including a public offering made pursuant to a registration statement under the Securities Act) and, notwithstanding such circumstances, to the extent permitted by applicable law, each Grantor agrees that any such private sale, to the extent permitted by applicable law, shall be deemed to have been made in a commercially reasonable manner and that the Collateral Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Investment Related Property for the period of time necessary to permit the issuer thereof to register it for a form of public sale

requiring registration under the Securities Act or under applicable state securities laws, even if such issuer would, or should, agree to so register it. If the Collateral Agent determines to exercise its right to sell any or all of the Investment Related Property, except any Investment Related Property that is an Excluded Asset, upon written request, each Grantor shall and shall cause each issuer of such Investment Related Property to be sold hereunder from time to time to furnish to the Collateral Agent all such information as the Collateral Agent may request in order to determine the number and nature of interest, shares or other instruments included in the Investment Related Property which may be sold by the Collateral Agent in exempt transactions under the Securities Act and the rules and regulations of the Securities and Exchange Commission thereunder, as the same are from time to time in effect.

## **7.6 Intellectual Property.**

(a) Anything contained herein to the contrary notwithstanding, but expressly subject to Section 11.3, upon the occurrence and during the continuation of an Event of Default:

(i) the Collateral Agent shall have the right (but not the obligation) to bring suit or otherwise commence any action or proceeding in the name of any Grantor, the Collateral Agent or otherwise, in the Collateral Agent's sole discretion, to enforce any Intellectual Property, in which event such Grantor shall, at the request of the Collateral Agent, do any and all lawful acts and execute any and all documents required by the Collateral Agent in aid of such enforcement and such Grantor shall promptly, upon demand, reimburse and indemnify the Collateral Agent as provided in Section 10 in connection with the exercise of its rights under this Section 7.6, and, to the extent that the Collateral Agent shall elect not to bring suit to enforce any Intellectual Property as provided in this Section 7.6, each Grantor agrees to use all reasonable measures, whether by action, suit, proceeding or otherwise, to prevent the infringement or other violation of any of such Grantor's rights in the Intellectual Property by others and for that purpose agrees to diligently maintain any action, suit or proceeding against any Person so infringing as shall be necessary to prevent such infringement or violation;

(ii) upon written demand from the Collateral Agent, each Grantor shall grant, assign, convey or otherwise transfer to the Collateral Agent or the Collateral Agent's designee all of such Grantor's right, title and interest in and to the Intellectual Property and shall execute and deliver to the Collateral Agent such documents as are necessary or appropriate to carry out the intent and purposes of this Agreement;

(iii) each Grantor agrees that such an assignment and/or recording shall be applied to reduce the Secured Obligations outstanding only to the extent that the Collateral Agent (or any Secured Party) receives cash proceeds in respect of the sale of, or other realization upon, the Intellectual Property;

(iv) all amounts and proceeds (including checks and other instruments) received by Grantor in respect of amounts due to such Grantor in respect of the Collateral Agent or any portion thereof shall be received in trust for the benefit of the Collateral Agent hereunder, shall be segregated from other funds of such Grantor and shall be forthwith paid over or delivered to the Collateral Agent in the same form as so received (with any



necessary endorsement) to be held as cash Collateral and applied as provided by Section 7.7;

(v) Grantor shall not adjust, settle or compromise the amount or payment of any such amount or release wholly or partly any obligor with respect thereto or allow any credit or discount thereon; and

(vi) the Collateral Agent shall have the right to notify, or require each Grantor to notify, any obligors with respect to amounts due or to become due to such Grantor in respect of the Intellectual Property, of the existence of the security interest created herein, to direct such obligors to make payment of all such amounts directly to the Collateral Agent, and, upon such notification and at the expense of such Grantor, to enforce collection of any such amounts and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done.

(b) If (i) an Event of Default shall have occurred and, by reason of cure, waiver, modification, amendment or otherwise, no longer be continuing; (ii) no other Event of Default shall have occurred and be continuing; (iii) an assignment or other transfer to the Collateral Agent of any rights, title and interests in and to the Intellectual Property shall have been previously made and shall have become absolute and effective; and (iv) the Secured Obligations shall not have become immediately due and payable, then upon the written request of any Grantor, the Collateral Agent shall promptly execute and deliver to such Grantor, at such Grantor's sole cost and expense, such assignments or other transfer documents as may be necessary to reassign to such Grantor any such rights, title and interests as may have been assigned to the Collateral Agent as aforesaid, subject to any disposition thereof that may have been made by the Collateral Agent; provided that, after giving effect to such reassignment, the Collateral Agent's security interest granted pursuant hereto, as well as all other rights and remedies of the Collateral Agent granted hereunder, shall continue to be in full force and effect; and provided, further, the rights, title and interests so reassigned shall be free and clear of any other Liens granted by or on behalf of the Collateral Agent and the Secured Parties.

(c) Solely for the purpose of enabling the Collateral Agent to exercise rights and remedies under this Section 7 and during such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby grants to the Collateral Agent, to the extent it has the right to do so, and subject to Section 11.3, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to such Grantor), subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of said Trademarks, to use, operate under, license, or sublicense any Intellectual Property now owned or hereafter acquired by such Grantor, and wherever the same may be located.

**7.7 Cash Proceeds.** In addition to the rights of the Collateral Agent specified in Section 4.3 with respect to payments of Receivables during the continuance of an Event of Default, all proceeds of any Collateral received by any Grantor consisting of cash, checks and other non-cash items (collectively, "**Cash Proceeds**") shall be held by such Grantor in trust for the Collateral Agent, segregated from other funds of such Grantor, and shall, forthwith upon

receipt by such Grantor, be turned over to the Collateral Agent in the exact form received by such Grantor (duly indorsed by such Grantor to the Collateral Agent, if required) and held by the Collateral Agent in an Investment Account (it being understood that each Grantor agrees to promptly comply with any reasonable request of the Collateral Agent to establish or enter into an Account Control Agreement or a Securities Account Control Agreement with respect to such an Investment Account). Any Cash Proceeds received by the Collateral Agent (whether from a Grantor or otherwise) may, in the sole discretion of the Collateral Agent, (A) be held by the Collateral Agent for the benefit of the Secured Parties, as collateral security for the Secured Obligations (whether matured or unmatured) and/or (B) be applied then or at any time thereafter by the Collateral Agent against the Secured Non-Management Obligations then due and owing.

#### **SECTION 8. COLLATERAL AGENT.**

The Collateral Agent has been appointed to act as Collateral Agent hereunder by the Secured Parties. The Collateral Agent shall be obligated, and shall have the right hereunder, to make demands, to give notices, to exercise or refrain from exercising any rights or remedies, and to take or refrain from taking any action (including, without limitation, the release or substitution of Collateral), solely in accordance with this Agreement and the Loan Documents. In furtherance of the foregoing provisions of this Section 8, each Secured Party, by its acceptance of the benefits hereof, agrees that, except as set forth in Section 10.08 of the Credit Agreement, it shall have no right individually to realize upon any of the Collateral hereunder, it being understood and agreed by such Secured Party that, except as set forth in Section 10.03 of the Credit Agreement, all rights and remedies hereunder may be exercised solely by the Collateral Agent for the benefit of the Secured Parties in accordance with the terms of this Section 8. The Collateral Agent may resign or be removed in accordance with Section 9.06 of the Credit Agreement. After the Collateral Agent's resignation or removal thereunder as the Collateral Agent, the provisions of this Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it under this Agreement while it was the Collateral Agent hereunder.

#### **SECTION 9. CONTINUING SECURITY INTEREST; TRANSFER OF LOANS.**

This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the payment in full of all Secured Obligations (other than contingent indemnification obligations and obligations under Secured Hedge Agreements not then due and payable and that do not become due and payable as a result of the payment in full of the other Secured Obligations) and be binding upon each Grantor and its successors and assigns, and inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns. Without limiting the generality of the foregoing, but subject to the terms of the Credit Agreement and the other Loan Documents, any Lender may assign or otherwise transfer any Loans held by it to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to the Lenders herein or otherwise. Upon the payment in full of all Secured Obligations (other than contingent indemnification obligations and obligations under Secured Hedge Agreements not then due and payable and that do not become due and payable as a result of the payment in full of the other Secured Obligations), the security interest granted hereby shall automatically terminate hereunder and of record and all rights to the Collateral shall revert to the

applicable Grantors. Upon any such termination, the Collateral Agent shall, at the Grantors' expense, execute and deliver to any Grantor such documents as such Grantor shall reasonably request to evidence such termination and promptly release any possessory Collateral to the applicable Grantors.

#### **SECTION 10. STANDARD OF CARE; COLLATERAL AGENT MAY PERFORM.**

The powers conferred on the Collateral Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the exercise of reasonable care in the custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Collateral Agent shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of Collateral in its possession if such Collateral is accorded treatment reasonably equal to that which the Collateral Agent accords its own property. Neither the Collateral Agent nor any of its directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Grantor or otherwise. If any Grantor fails to perform any agreement contained herein, the Collateral Agent may itself perform, or cause performance of, such agreement, and the expenses of the Collateral Agent incurred in connection therewith shall be payable by each Grantor under Section 10.04 of the Credit Agreement.

#### **SECTION 11. MISCELLANEOUS.**

**11.1 General.** Any notice, request or demand required or permitted to be given under this Agreement shall be given in accordance with Section 10.02 of the Credit Agreement. No failure or delay on the part of the Collateral Agent in the exercise of any power, right or privilege hereunder or under any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists. This Agreement shall be binding upon and inure to the benefit of the Collateral Agent and the Grantors and their respective successors and assigns. No Grantor shall assign any right, duty or obligation hereunder. This Agreement and the other Loan Documents embody the entire agreement and understanding between the Grantors and the Collateral Agent and supersede all prior agreements and understandings between such parties relating to the subject matter hereof and thereof. Accordingly, the Loan Documents may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no

unwritten or oral agreements between the parties. This Agreement may be executed in one or more counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

**11.2 Waivers.** Each Grantor hereby waives, to the extent not prohibited by Law, for the benefit of the Secured Parties:

(a) any right to require any Secured Party, as a condition of payment or performance by such Grantor, to (i) proceed against the Borrower, any other Grantor or any other Person; (ii) proceed against or exhaust any security held from the Borrower, any other Grantor or any other Person; (iii) proceed against or have resort to any balance of any deposit account or credit on the books of any Secured Party in favor of the Borrower, any such other Grantor, or any other Person; or (iv) pursue any other remedy in the power of any Secured Party whatsoever;

(b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of the Borrower or any other Grantor including any defense based on or arising out of the lack of validity or the unenforceability of any of the Secured Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of the Borrower or any other Grantor from any cause other than payment in full of all Secured Obligations;

(c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal;

(d) any defense based upon any Secured Party's administrative errors or omissions, except behavior which amounts to gross negligence, bad faith or willful misconduct;

(e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms of this Agreement and any legal or equitable discharge of such Grantor's obligations hereunder; (ii) the benefit of any statute of limitations affecting such Grantor's liability hereunder or the enforcement hereof; (iii) any rights to set-offs, recoupments and counterclaims; and (iv) promptness, diligence and any requirement that any Secured Party protect, secure, perfect or insure any security interest or lien or any property subject thereto;

(f) notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance of this Agreement, notices of default under the Loan Documents, the Secured Hedge Agreements, the Secured Cash Management Agreements or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Secured Obligations or any agreement related thereto and notices of any extension of credit to the Borrower or any other Grantor;

(g) any defenses (other than the defense of payment) or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Agreement;

(h) to the extent such waiver is not prohibited by Section 9-602 of the UCC, any defense based upon any Secured Party's failure to mitigate damages; and

(i) all rights to insist upon, plead or in any manner claim or take the benefit or advantage of any appraisal, valuation, stay, extension, marshaling of assets, redemption or similar law, or exemption, whether now or hereafter in force, which may delay, prevent or otherwise affect the performance by any Grantor of its obligations under, or the enforcement by any Secured Party of, this Agreement.

**11.3 IGRA Compliance** Notwithstanding any provision in any Loan Document, or any other right to enforce the provisions of any Loan Document, none of the Collateral Agent nor the other Secured Parties shall engage in any of the following: planning, organizing, directing, coordinating, or controlling all or any portion of the Gaming Business (collectively, "**Management Activities**"), including, but not limited to:

(a) the training, supervision, direction, hiring, firing, retention, compensation (including benefits) of any employee (whether or not a management employee) or contractor;

(b) any working or employment policies or practices;

(c) the hours or days of operation;

(d) any accounting systems or procedures;

(e) any advertising, promotions or other marketing activities;

(f) the purchase, lease, or substitution of any gaming device or related equipment or software, including player tracking equipment;

(g) the vendor, type, theme, percentage of pay-out, display or placement of any gaming device or equipment; or

(h) budgeting, allocating, or conditioning payments of the Borrower's operating expenses;

provided, however, that upon the occurrence of a default under this Agreement or a Default or Event of Default, neither the Collateral Agent nor any other Secured Party will be in violation of the foregoing restriction solely because it: (i) enforces compliance with any term in any Loan Document that does not require the gaming operation to be subject to any third-party decision-making as to any Management Activities; (ii) requires that all or any portion of the revenues securing the Loans be applied to satisfy valid terms of the Loan Documents; or (iii) otherwise forecloses on all or any portion of the Collateral securing the Secured Obligations.

Notwithstanding any other possible construction of any provision(s) contained in this Agreement or in any other Loan Document, it is agreed that within the meaning of the IGRA: (a) the Loan Documents, individually and collectively, do not and shall not provide for the management of all or any part of the Gaming Business by any person other than the Borrower or the Tribe or deprive the Borrower or the Tribe of the sole proprietary interest and

responsibility for the conduct of the Gaming Business; and (b) none of the Collateral Agent nor the other Secured Parties (or any of their successors, assigns or agents) will exercise any remedy or otherwise take any action under or in connection with any Loan Document in a manner that would constitute management of all or any part of the Gaming Business or that would deprive the Borrower or the Tribe of the sole proprietary interest and responsibility for the conduct of the Gaming Business.

**11.4 Section 81 Compliance.** For the avoidance of any doubt, it is acknowledged that none of the Loan Documents executed on the Closing Date is intended to grant or grants a Lien on any real property owned by the Grantors or the Tribe or any agencies or instrumentalities of the Tribe, and no interpretation shall be given to any Loan Document which would have the effect of such an encumbrance. Notwithstanding any right of the Collateral Agent or any other Secured Party in this Agreement, or in any Loan Document, or any requirements or restrictions imposed on the Grantors or the Tribe in any Loan Document, any right, requirement or restriction that “encumbers Indian land” within the meaning of 25 U.S.C. § 81, shall not be effective for longer than six years, 364 days.

**11.5 Updates to Disclosure Schedules.** Upon delivery of any duly completed and executed Security Agreement Supplement and acceptance thereof in accordance with the terms hereof, the applicable Schedules hereto shall be deemed to have been updated as provided therein.

**11.6 Governing Law.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE GRANTORS, AND THE SECURED PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS OF THE LAWS OF THE STATE OF NEW YORK, OTHER THAN SECTION 5-1401 and 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW); PROVIDED HOWEVER, THAT IF THE CREATION OR ATTACHMENT OF ANY SECURITY INTEREST IN ANY ITEM OF COLLATERAL IS EXCLUDED FROM THE COVERAGE OF THE NEW YORK UCC OR THE SECURITY INTEREST IN ANY ITEM OF COLLATERAL CANNOT BE CREATED OR ATTACHED UNDER THE NEW YORK UCC, THEN THE CREATION AND/OR ATTACHMENT OF THE SECURITY INTERESTS IN SUCH COLLATERAL SHALL BE GOVERNED BY THE SECURED TRANSACTIONS ORDINANCE.

**11.7 Waiver of Sovereign Immunity.**

(a) Waiver of Sovereign Immunity. Each of the Grantors, and with respect to the Borrower, in conformity with Sections 1(C) and 5(C)(10) of the Authority Ordinance, hereby expressly, unequivocally and irrevocably waives its respective sovereign immunity (and any defense based thereon) from any suit, action, arbitration or other legal proceedings or from any legal process, in each case of any nature whether such action be brought in or arise under law, equity, contract, tort or statute (inclusive of claims and counterclaims, actions for equitable or provisional relief and to compel arbitration, and whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution, exercise of contempt powers, or

otherwise) (an “**Action**”) and, further, waives any sovereign immunity from any judgment or order related thereto, provided that:

(i) the Action is brought by the Collateral Agent, any other Secured Party or any of their respective successors in interest or assigns or any other person who is entitled to the benefits of the Loan Documents (including without limitation the indemnitees referred to in Section 10.04 of the Credit Agreement) (collectively the “**Grantees**”);

(ii) reserved;

(iii) the Action (A) arises under any Loan Document or any Grantor’s obligations thereunder, including, without limitation, any Action to interpret or enforce or otherwise seek or obtain relief with respect to the provisions of the Loan Documents or otherwise in connection therewith, in connection with the obligations of any Grantor thereunder or in connection with the transactions contemplated thereby, whether such rights arise in law or equity, (B) is to enforce and execute any order, judgment or ruling resulting from such an Action or arbitration award, or (C) is to adjudicate any claim under the Indian Civil Rights Act, 25 U.S.C. § 1301 et seq. or any claim brought by a Grantee under the laws of the Tribe;

(iv) the Action may seek all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief, but in any event shall not include a claim for punitive or consequential damages; provided that nothing contained in this clause (iv) or Section 11.8(e) below shall limit the Borrower’s indemnity and reimbursement obligations referred to in Section 10.04 of the Credit Agreement to the extent such punitive or consequential damages are included in any third party claim in connection with which an indemnified party is entitled to indemnification hereunder; and

(v) any order, judgment, ruling or other remedies related to an Action shall be enforceable only against the assets described under Section 11.7(b).

(b) The Secured Obligations of the Grantors are general obligations of the Grantors; provided, however, that no recourse may be made against Protected Assets. The obligations of the Tribe are limited recourse obligations enforceable solely against the Recourse Assets; provided, however, that upon the occurrence and during the continuance of an Event of Default resulting from or related to any of the Tribal Provisions, the obligations of the Grantors and the Tribe will also be enforceable against all other assets of the Tribe, other than Protected Assets; provided, further, however, that with respect to an Event of Default consisting solely of the receipt by the Tribe of a payment from the Borrower or the Grantors in violation of the Loan Documents, such recourse to the other assets of the Tribe shall be limited to the extent of such payment received by the Tribe.

## **11.8 Consents to Jurisdiction; Waivers of Venue; Exhaustion; Service of Process.**

(a) Consent to Jurisdiction. Subject to the foregoing limitations on each Grantor’s waiver of sovereign immunity, each of the Grantors hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District

Court, Southern District of New York, and any appellate court to which any appeals therefrom are available (collectively, the “**New York Federal Courts**”) and the courts of the State of New York sitting in the City of New York, County of New York, and any appellate court to which any appeals therefrom are available (collectively, the “**New York State Courts**”) and the United States District Court, Eastern District of California, and any appellate court to which any appeals therefrom are available (collectively, the “**California Federal Courts**” and, together with the New York Federal Courts, the “**Federal Courts**”) and the courts of the State of California and any appellate court to which any appeals therefrom are available (collectively, the “**California State Courts**”), or if none of the foregoing courts accepts jurisdiction over an Action, then the tribal courts of the Tribe for the limited purpose of an action to compel arbitration, enforce an arbitration award or to adjudicate any claim under the Indian Civil Rights Act, 25 U.S.C. § 1301 et. seq. or any claim brought by a Grantee under the laws of the Tribe (collectively with the Federal Courts, the New York State Courts and the California State Courts, the “**Consented Courts**”) and each of the Grantors irrevocably and unconditionally agrees that all claims in respect of any Action shall be heard and determined in such Consented Court as set forth herein and agrees to be bound by the decisions of any such court. Notwithstanding the foregoing, each of the Grantors agrees that any final judgment, arbitration award or order in any such actions or proceedings shall be conclusive and may be enforced by any court of any other jurisdiction, including, without limitation, the tribal courts of the Tribe. Each Tribal Party agrees that a Tribal police officer, tribal law enforcement official or licensed peace officer (each a “**Tribal Officer**”) is authorized to execute such judgment, award or order and that any such Tribal Officer, and any other government or other governmental authorities who have the right and duty under applicable law shall take any and all action authorized or ordered by any such judgment, award or order, including without limitation, entering the real property of any Grantor and removing or permitting the removal of any personal property in giving effect to any judgment entered. In addition, with respect to any Collateral, the Grantors agree that the Collateral Agent or any Secured Party may also enforce its rights and remedies with respect to the Collateral (whether judicially or non-judicially) in any jurisdiction in which such Collateral or any Grantor is located.

(b) Waiver of Venue. Each of the Grantors hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any Action arising out of or relating to any Loan Document or the transactions contemplated hereunder in any Federal Court, New York State Court or California State Court. Each of the Grantors irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such Action in any such court.

(c) Tribal Exhaustion/Tribal Court Actions. Each of the Grantors hereby expressly, unconditionally and irrevocably waives, to the fullest extent it may legally and effectively do so, any right such Grantor may otherwise have to require that any Action be considered or heard in any court (other than as set forth in Section 11.8(a)), including without limitation considered or heard first in any tribal court or forum of the Tribe, now or hereafter existing, whether because of the doctrine of exhaustion of tribal remedies or as a matter of comity or abstention. Each Grantor agrees not to commence any Action in any tribal court or forum of the Tribe without the consent of the other parties to such Action.



(d) Service of Process. Each of the Grantors hereby irrevocably consents to service of process in the manner provided for notices in any Loan Document, provided that nothing in any Loan Document will affect the right of any party hereto or thereto to serve process in any other manner permitted by law. In addition to and without limiting the generality of the foregoing, each of the Grantors consent and agree that, notwithstanding Tribal Court Ordinance Art. V1, CH. 3 § 1 or any other tribal law to the contrary, process against such Person shall also be effective if served (A) on the chairperson of such Grantor, or (B) by sending two copies of the process by registered or certified mail addressed to the “General Counsel” of such Grantor, at the address set forth on Section 10.02 of the Credit Agreement.

(e) Secured Parties/Indemnitees. The waivers and consents described in Sections 11.7 through 11.10 shall inure to the benefit of the Collateral Agent, the other Secured Parties and each other person who is entitled to the benefits of the Loan Documents (including without limitation the indemnitees described herein and in the Credit Agreement). The Collateral Agent, the other Secured Parties and such other persons shall have and be entitled to all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief (other than, subject to the proviso to Section 11.7(a)(IV), punitive or consequential damages). The waivers of sovereign immunity and consents to jurisdiction contained in Section 11.7 and this Section 11.8 are irrevocable.

(f) California Judicial Reference. If any Action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by this Agreement or any other Loan Document, the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such Action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any party to such proceeding, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court.

(g) Miscellaneous. Notwithstanding any of the foregoing, nothing in the Loan Documents will limit the ability of the Collateral Agent or any other Secured Party or their respective successors and assigns, to move to compel arbitration or move to stay or dismiss a lawsuit in favor of arbitration, and each Grantor’s waiver of sovereign immunity will expressly extend to such actions. Each of the Grantors hereby agrees, consistent with Section 18 of the Authority Ordinance, that its limited waiver of sovereign immunity and other waivers described in Sections 11.7 and 11.8 are irrevocable and agrees not to revoke or further limit, in whole or in part, its limited waiver of sovereign immunity or the waivers described in these sections or in any way attempt to revoke or further limit, in whole or in part, such limited waiver of sovereign immunity. In the event that any of the Grantors (i) revokes, further limits or attempts to revoke or further limit the limited waiver of sovereign immunity described in Sections 11.7 and 11.8, (ii) takes any action which is inconsistent with the waivers described in Sections 11.7 and 11.8 or (iii) fails to submit to the jurisdiction of the courts as described in Sections 11.7 and 11.8, each of the Grantors hereby consent to the entry of appropriate injunctive relief.

**11.9 Waiver of Jury Trial.** Each of the Grantors hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal

proceeding directly or indirectly arising out of or relating to this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (whether based on contract, tort or any other theory). Each of the Grantors (a) certifies that no representative, agent or attorney of any other Person has represented, expressly or otherwise, that such other Person would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement and the other Loan Documents by, among other things, the mutual waivers and certifications in this Section 11.9.

### **11.10 Arbitration.**

(a) Invocation of Arbitration. At the option of the Collateral Agent, any controversy or claim between or among the parties to this Agreement, whether arising in contract, tort or statute, including controversies and claims that arise out of or relate to this Agreement (including any renewals, extensions or modifications) or any other Loan Document shall be resolved by binding arbitration in New York, New York. For purposes of this Section 11.10 only, the term “Collateral Agent” shall also include any parent corporation, subsidiary or affiliate of such Collateral Agent, involved in the servicing, management or administration of the Collateral or any obligation described or evidenced by this Agreement. The arbitration shall be conducted in accordance with the procedural rules of the Federal Arbitration Act (Title 9, U.S. Code) and the regulations promulgated thereunder, notwithstanding any choice of law provision in this Agreement or any other Loan Document, and under the rules and procedures for the arbitration of financial services disputes of the American Arbitration Association or any successor thereof (“AAA”); provided, however, that the arbitration shall be heard and determined by a panel of three arbitrators. Any Grantee to this Agreement claiming the neglect or refusal of another party to proceed with an arbitration hereunder may make application to any court of competent jurisdiction as set forth in Section 11.8(a) for an order directing the parties to proceed with the arbitration in compliance with this Section 11.10. In the event such an action to compel arbitration is commenced in the courts of the Tribe, the court shall order the parties to arbitration in accordance with the provisions of this Section 11.10 and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

(b) Confirmation and Enforcement of Arbitration Award. The arbitrator(s) shall give effect to statutes of limitation in determining any claim. At any time within one year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to any court of competent jurisdiction as set forth in Section 11.8(a) for an order confirming the award. An arbitration award shall not be subject to review or modification by a court for any reason other than in the circumstances described in 9 U.S.C. §§ 9, 10 and 11. The judgment confirming an award shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in a court of competent jurisdiction as set forth in Section 11.8(a). When the award requires the performance of any other act than the payment of money, the court shall direct the enforcement thereof in the manner provided by law.

(c) Provisional Remedies. No provision of this Section 11.10 shall limit the right of any party to (A) exercise self-help remedies, (B) initiate judicial or non-judicial foreclosure against any Collateral, (C) exercise any judicial or power of sale rights, or (D) act in a court of

competent jurisdiction as set forth in Section 11.8(a) to obtain an interim remedy, such as but not limited to, injunctive relief or writ of possession, or additional or supplemental remedies, in each case before, after, or during the pendency of any arbitration or other proceeding. The exercise of a remedy does not waive the right of the Collateral Agent to resort to arbitration.

[SIGNATURE PAGES FOLLOW]


IN WITNESS WHEREOF, each Grantor and the Collateral Agent have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**SHINGLE SPRINGS TRIBAL GAMING  
AUTHORITY**

By:   
Name: Yolanda Tayaba  
Title: SSTGA Chairperson

Address: 1 Red Hawk Parkway  
Placerville, CA 95667  
Phone: 530-672-4900  
Fax: 530-672-5130  
Attention: David Mustard


Attested:

By:   
Name: Pat Cuellar  
Title: SSTGA Vice Chairperson

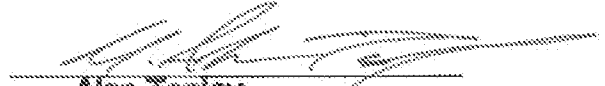
[Signature Page to Security Agreement]

**BANK OF AMERICA, N.A.,**  
as the Collateral Agent

By:  
Name:  
Title:

  
Henry Perini  
Vice President

By:  
Name:  
Title:

  
Alan Tapley  
Assistant Vice President

[Signature Page to Security Agreement]

**TRADEMARK**  
**REEL: 005102 FRAME: 0373**

**SCHEDULE 4.1(A)**  
**GENERAL INFORMATION**  
**LEGAL NAME OF GRANTOR; ORGANIZATION; ORGANIZATIONAL IDENTIFICATION NUMBER;**  
**CHIEF EXECUTIVE OFFICE**

<u>Full Legal Name</u>	<u>Type of Organization</u>	<u>Jurisdiction of Organization</u>	<u>Organizational ID</u>	<u>Jurisdiction of Chief Executive Office</u>
Shingle Springs Tribal Gaming Authority	Unincorporated Instrumentality and Political Subdivision of the Shingle Springs Band of Miwok Indians	Sovereign jurisdiction of the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria	None	Sovereign jurisdiction of the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria

**SCHEDULE 4.1(B)**  
**GENERAL INFORMATION**  
**OTHER BUSINESS NAMES**

Name of Assignor

Trade and/or Fictitious Names

Shingle Springs Tribal Gaming Authority

Red Hawk Casino

**SCHEDULE 4.1(C)  
GENERAL INFORMATION  
CHANGES IN JURISDICTION**

None.



**SCHEDULE 4.1(D)**  
**GENERAL INFORMATION**  
**SECURITY AGREEMENTS WITHIN PAST 5 YEARS**

None.

**SCHEDULE 4.1(E)  
GENERAL INFORMATION  
UCC FILING OFFICES**

**Grantor**

**Filing Offices**

Borrower

Secretary of State of California; Recorder of Deeds of the  
District of Columbia

**SCHEDULE 4.1(F)**  
**GENERAL INFORMATION**  
**COLLATERAL CONSTITUTING FARM PRODUCTS**

None.

**SCHEDULE 4.1(G)  
GENERAL INFORMATION  
AS-EXTRACTED COLLATERAL**

None.

**SCHEDULE 4.2**  
**LOCATION OF EQUIPMENT AND INVENTORY**

1. Shingle Springs Rancheria.
2. 6221 Enterprise Drive, Suites M & K, Diamond Springs, California.

**SCHEDULE 4.4(A)  
INVESTMENT RELATED PROPERTY  
EQUITY INTERESTS ACQUIRED**

None.

**SCHEDULE 4.4(B)  
INVESTMENT RELATED PROPERTY  
PLEGGED DEBT OWNED**

None.

**SCHEDULE 4.4(C)  
INVESTMENT RELATED PROPERTY  
SECURITIES ACCOUNTS**

None.



**SCHEDULE 4.4(D)**  
**INVESTMENT RELATED PROPERTY**  
**COMMODITIES ACCOUNTS**

None.

**SCHEDULE 4.4(E)**  
**INVESTMENT RELATED PROPERTY**  
**DEPOSIT ACCOUNTS**

<b>Name of Assignor</b>	<b>Description of Deposit Account</b>	<b>Account Number</b>	<b>Name of Bank, Address and Contact Information</b>	<b>Jurisdiction of Band (determined in accordance with UCC § 9-304)</b>
Shingle Springs Tribal Gaming Authority	Notes Dominion Account (Parent Sweep Account)	000004121561039	<p>Wells Fargo, N.A.  D1129-072  301 South Tryon St., 7<sup>th</sup> Floor  Charlotte, N.C. 28282-1915  Attn: DACA Team</p> <p><i>copy to:</i></p> <p>Wells Fargo Bank, N.A.  A4649-027  5340 Kietzle Lane, 2<sup>nd</sup> Floor  Reno, N.V. 89511  Attn: Felis Gallues</p>	New York
Shingle Springs Tribal Gaming Authority	Jackpot Account	000004121805444	<i>see above</i>	<i>see above</i>
Shingle Springs Tribal Gaming Authority	Payroll Account	000004121558787	<i>see above</i>	<i>see above</i>
Shingle Springs Tribal Gaming Authority	General/Accounts Payable Account	000004121558779	<i>see above</i>	<i>see above</i>

**SCHEDULE 4.5**  
**MATERIAL CONTRACTS**

1. Amended and Restated Tribal-State Gaming Compact, dated November 16, 2012, and deemed approved by the Department of the Interior, Assistant Secretary—Indian Affairs, on July 23, 2013, publication of which appeared in the Federal Register on July 23, 2013 (78 Fed. Reg. 44146).
2. Memorandum of Understanding and Intergovernmental Agreement between the Shingle Springs Band of Miwok Indians and the County of El Dorado, executed September 28, 2006, as amended October 20, 2012.
3. Memorandum of Agreement between Shingle Springs Band of Miwok Indians and Unite HERE International Union, executed June 26, 2012.
4. Agreement for Fire Protection Services Between the El Dorado County Fire District and the Shingle Springs Band of Miwok Indians, executed July 30, 2008, as amended June 27, 2013.
5. Funding Agreement Between the County of El Dorado and the Shingle Springs Band of Miwok Indians for Ambulance Services, executed August 26, 2008, as extended pursuant to Letter of Agreement re Renewal of Contract for Provision of EMS Services at Red Hawk Casino, effective July 1, 2013.

**SCHEDULE 4.6**  
**DESCRIPTION OF LETTERS OF CREDIT**

None.

**SCHEDULE 4.7(A)**  
**INTELLECTUAL PROPERTY - COPYRIGHTS**

None.

**SCHEDULE 4.7(B)**  
**INTELLECTUAL PROPERTY - COPYRIGHT LICENSES**

1. Licenses granted pursuant to gaming machines purchase and lease agreements entered into by the Shingle Springs Tribal Gaming Authority.

**SCHEDULE 4.7(C)**  
**INTELLECTUAL PROPERTY - PATENTS**

None.

**SCHEDULE 4.7(D)**  
**INTELLECTUAL PROPERTY - PATENT LICENSES**

1. Licenses granted pursuant to gaming machines purchase and lease agreements entered into by the Shingle Springs Tribal Gaming Authority.



**SCHEDULE 4.7(E)**  
**INTELLECTUAL PROPERTY - TRADEMARKS**

<b><u>Name of Assignor</u></b>	<b><u>Registration or Serial Number</u></b>	<b><u>Publication Date</u></b>	<b><u>Registration Date</u></b>	<b><u>Title</u></b>
Shingle Springs Tribal Gaming Authority	3,886,697	Jul. 6, 2010	Dec. 7, 2010	Red Hawk Casino
Shingle Springs Tribal Gaming Authority	4,128,909	Jan. 31, 2012	Apr. 17, 2012	Fortune's Rewards
Shingle Springs Tribal Gaming Authority	85479524	Jan. 31, 2012	<i>pending</i>	Club Fortune

**SCHEDULE 4.7(F)**  
**INTELLECTUAL PROPERTY - TRADEMARK LICENSES**

1. Licenses granted pursuant to gaming machines purchase and lease agreements entered into by the Shingle Springs Tribal Gaming Authority.

**SCHEDULE 4.7(G)**  
**INTELLECTUAL PROPERTY - TRADE SECRET LICENSES**

None.

**SCHEDULE 4.8  
COMMERCIAL TORT CLAIMS**

None.

**ANNEX I  
to Security Agreement**

**JOINDER AGREEMENT**

This **JOINDER AGREEMENT** (this "Joinder Agreement"), dated as of \_\_\_\_\_, 20\_\_\_\_, is delivered by \_\_\_\_\_, a \_\_\_\_\_ (the "**Additional Grantor**") pursuant to the Security Agreement, dated as of August 29, 2013 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Security Agreement**"), among Shingle Springs Tribal Gaming Authority, as the Borrower and a Grantor, the other Grantors named therein and Bank of America, N.A., as Collateral Agent. Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

RECITALS:

WHEREAS, the Borrower and the other Grantors (other than the Additional Grantor) have entered into the Security Agreement in favor of the Collateral Agent for the benefit of the Secured Parties (as defined in the Credit Agreement);

WHEREAS, the agreements, documents and instruments related to the Secured Obligations secured by the Security Agreement require the Additional Grantor to become a party to the Security Agreement; and

WHEREAS, the Additional Grantor has agreed to execute and deliver this Joinder Agreement in order to become a party to the Security Agreement.

NOW, THEREFORE, IT IS AGREED:

1. Security Agreement. By executing and delivering this Joinder Agreement, the Additional Grantor, as provided in Section 5.3 of the Security Agreement, hereby becomes a party to the Security Agreement as a Grantor thereunder with the same force and effect as if originally named therein as a Grantor and, without limiting the generality of the foregoing, hereby expressly assumes all obligations and liabilities of a Grantor thereunder. Attached hereto is a Security Agreement Supplement with the information with respect to the Additional Grantor required under Section 4 of the Security Agreement. The Additional Grantor hereby represents and warrants that each of the representations and warranties contained in Section 4 of the Security Agreement is true and correct on and as the date hereof (after giving effect to this Joinder Agreement) as if made by such Additional Grantor on and as of such date.

2. Grant of Security Interest. The Additional Grantor hereby assigns as collateral security to the Collateral Agent (for the benefit of the Secured Parties), and hereby grants to the Collateral Agent (for the benefit of the Secured Parties) a security interest in and continuing lien on, all of the Additional Grantor's right, title and interest in, to and under all of the property described in Section 2.1 of the Security Agreement, in each case, whether now owned or existing or hereafter acquired or arising and wherever located (collectively, but

exclusive of any Excluded Assets, and together with the Collateral under the Security Agreement, the “**Collateral**”), for the prompt and complete payment and performance when due and with all rights and remedies under the New York UCC, the Secured Transactions Ordinance or any other applicable Uniform Commercial Code (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) of the Secured Obligations, subject to the exclusions, limitations and other provisions set forth in Section 2.2 of the Security Agreement.

3. Guaranty Provisions. The Additional Grantor agrees that the agreements, obligations, waivers, covenants and representations of the Additional Grantor and the other grantors set forth in Sections 2.4 and 2.5 of that certain Guaranty, dated as of [\_\_\_\_\_], by the Additional Grantor and the additional signatories thereto in favor of the Collateral Agent, are incorporated into the Security Agreement *mutatis mutandis*.

4. Management Activities, Sovereign Immunity and Governing Law. **THE PROVISIONS UNDER THE HEADINGS “MANAGEMENT ACTIVITIES”, “WAIVER OF SOVEREIGN IMMUNITY”, “CONSENTS TO JURISDICTION; WAIVERS OF VENUE; EXHAUSTION; SERVICE OF PROCESS”, “WAIVER OF JURY TRIAL”, “ARBITRATION”, “SECTION 81 COMPLIANCE” AND “GOVERNING LAW” IN THE SECURITY AGREEMENT ARE INCORPORATED HEREIN BY THIS REFERENCE AND SHALL APPLY TO THE ADDITIONAL GRANTOR AS IF SUCH ADDITIONAL GRANTOR EXECUTED THE SECURITY AGREEMENT AS A GRANTOR.**

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, the undersigned has caused this Joinder Agreement to be duly executed and delivered as of the date first above written.

\_\_\_\_\_

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

**EXHIBIT A  
to Security Agreement**

**SECURITY AGREEMENT SUPPLEMENT**

This **SECURITY AGREEMENT SUPPLEMENT** (this "Supplement"), dated as of \_\_\_\_\_, 20\_\_\_\_, is delivered by \_\_\_\_\_ a \_\_\_\_\_ (the "**Grantor**") pursuant to the Security Agreement, dated as of August 29, 2013 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Security Agreement**"), among Shingle Springs Tribal Gaming Authority, the other Grantors named therein, and Bank of America, N.A., as the Collateral Agent. Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed thereto in the Security Agreement.

The Grantor hereby confirms the grants of security interests to the Collateral Agent set forth in Section 2.1 of the Security Agreement. The Grantor represents and warrants that the attached supplements to Schedules accurately and completely set forth all additional information required pursuant to the Security Agreement and hereby agrees that such supplements to Schedules shall constitute part of the Schedules to the Security Agreement.

**THE PROVISIONS UNDER THE HEADINGS "MANAGEMENT ACTIVITIES", "WAIVER OF SOVEREIGN IMMUNITY", "CONSENTS TO JURISDICTION; WAIVERS OF VENUE; EXHAUSTION; SERVICE OF PROCESS", "WAIVER OF JURY TRIAL", "ARBITRATION", "SECTION 81 COMPLIANCE" AND "GOVERNING LAW" IN THE SECURITY AGREEMENT ARE INCORPORATED HEREIN BY THIS REFERENCE.**

**IN WITNESS WHEREOF**, the Grantor has caused this Security Agreement Supplement to be duly executed and delivered by its duly authorized officer as of \_\_\_\_\_, 20\_\_\_\_.

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

***[NOTE: Grantor to attach each of the Schedules to the Security Agreement necessary to reflect any changes to such Schedules.]***



**EXHIBIT B  
to Security Agreement**

**FORM OF DEPOSIT ACCOUNT  
CONTROL AGREEMENT**

[SEE ATTACHED]

## DEPOSIT ACCOUNT CONTROL AGREEMENT

### (Access Restricted after Notice)

This **Deposit Account Control Agreement** (the "Agreement"), dated as of the date specified on the initial signature page of this Agreement, is entered into by and among **Shingle Springs Tribal Gaming Authority** ("Company"), an unincorporated instrumentality and political subdivision of the Shingle Springs Band of Miwok Indians (the "Tribe"), **Bank of America, N.A.** in its capacity as collateral agent under the Security Agreement referred to below ("Secured Party") and **Wells Fargo Bank, National Association** ("Bank"), and sets forth the rights of Secured Party and the obligations of Bank with respect to the deposit accounts of Company at Bank identified at the end of this Agreement as the Collateral Accounts (each hereinafter referred to individually as a "Collateral Account" and collectively as the "Collateral Accounts"). Each account designated as a Collateral Account includes, for purposes of this Agreement, and without the necessity of separately listing subaccount numbers, all subaccounts presently existing or hereafter established for deposit reporting purposes and integrated with the Collateral Account by an arrangement in which deposits made through subaccounts are posted only to the Collateral Account. Each of the Collateral Accounts is a "deposit account" as defined in Section 9-102(a)(29) of the Uniform Commercial Code in effect in the State of New York. Bank is a "Bank" as defined in Section 9-102(a)(8) of the Uniform Commercial Code in effect in the State of New York.

- 1. Secured Party's Interest in Collateral Accounts.** Secured Party represents that it is an agent for a group of lenders who have extended credit to the Company and, in such capacity, and has been granted a security interest in the Collateral Accounts. Company hereby confirms the security interest granted by Company to Secured Party in all of Company's right, title and interest in and to the Collateral Accounts and all sums now or hereafter on deposit in or payable or withdrawable from the Collateral Accounts (the "Collateral Account Funds") pursuant to that certain Security Agreement, dated as of August 29, 2013, by and among the Company, the other grantors time to time party thereto and the Secured Party (as amended, restated, amended and restated, supplemented or otherwise modified, renewed or replaced from time to time, the "Security Agreement"). In furtherance of the intentions of the parties hereto, this Agreement constitutes written notice by Secured Party to Bank of Secured Party's security interest in the Collateral Accounts.
- 2. Secured Party Control.** Bank, Secured Party and Company each agree that Bank will comply with instructions given to Bank by Secured Party directing disposition of funds in the Collateral Accounts ("Disposition Instructions") without further consent by Company. Except as otherwise required by law, Bank will not agree with any third party to comply with instructions for disposition of funds in the Collateral Accounts originated by such third party.
- 3. Company Access to Collateral Accounts.** Notwithstanding the provisions of the "Secured Party Control" section of this Agreement, Secured Party agrees that Company will be allowed access to the Collateral Accounts and Collateral Account Funds until Bank receives, and has had a reasonable opportunity (not to exceed two (2) Business Days) to act on, written notice from Secured Party directing that Company no longer have access to any Collateral Accounts or Collateral Account Funds (an "Access Termination Notice"). Company irrevocably authorizes Bank to comply, and Bank hereby agrees to comply, with any Access Termination Notice and/or Disposition Instructions even if Company objects to them in any way, and agrees that Bank may pay any and all Collateral Account Funds to Secured Party in response to any Disposition

Instructions. Company further agrees that after Bank receives an Access Termination Notice, Company will not have access to any Collateral Accounts or Collateral Account Funds.

- 4. Transfers in Response to Disposition Instructions.** Notwithstanding the provisions of the "Secured Party Control" section of this Agreement, unless Bank separately agrees in writing to the contrary, Bank will have no obligation to disburse funds in response to Disposition Instructions other than by automatic standing wire. Bank agrees that on each Business Day after it receives and has had a reasonable opportunity (not to exceed two (2) Business Days) to act on an Access Termination Notice and corresponding Disposition Instructions it will transfer to the account specified at the end of this Agreement as the Destination Account or, if no account is specified, to such account as Secured Party specifies in the Access Termination Notice (in either case, the "Destination Account") the full amount of the collected and available balance in the Collateral Accounts at the beginning of such Business Day. Any disposition of funds which Bank makes in response to Disposition Instructions is subject to Bank's standard policies, procedures and documentation governing the type of disposition made; provided, however, that in no circumstances will any such disposition require Company's consent. To the extent any Collateral Account is a certificate of deposit or time deposit, Bank will be entitled to deduct any applicable early withdrawal penalty prior to disbursing funds from such account in response to Disposition Instructions. To the extent Secured Party requests that funds be transferred from any Collateral Account in a currency different from the currency denomination of the Collateral Account, the funds transfer will be made after currency conversion at Bank's then current buying rate for exchange applicable to the new currency.
- 5. Lockboxes.** To the extent items deposited to a Collateral Account have been received in one or more post office lockboxes maintained for Company by Bank (each a "Lockbox") and processed by Bank for deposit, Company acknowledges that Company has granted Secured Party a security interest in all such items (the "Remittances"). Company agrees that after Bank receives an Access Termination Notice, Company will have no further right or ability to instruct Bank regarding the receipt, processing or deposit of Remittances, and that Secured Party alone will have the right and ability to so instruct Bank. Company and Secured Party acknowledge and agree that Bank's operation of each Lockbox, and the receipt, retrieval, processing and deposit of Remittances, will at all times be governed by Bank's Master Agreement for Treasury Management Services or other applicable treasury management services agreement, and by Bank's applicable standard lockbox Service Description.
- 6. Balance Reports and Bank Statements.** Bank agrees, at the request of Secured Party on any day on which Bank is open to conduct its regular banking business, other than a Saturday, Sunday or public holiday (each a "Business Day"), to make available to Secured Party a report ("Balance Report") showing the opening available balance in the Collateral Accounts as of the beginning of such Business Day, by a transmission method determined by Bank, in Bank's sole discretion. Company expressly consents to this transmission of information. After Bank receives an Access Termination Notice, Bank will, on receiving a written request from Secured Party, send to Secured Party by United States mail, at the address indicated for Secured Party after its signature to this Agreement, duplicate copies of all periodic statements on the Collateral Accounts which are subsequently sent to Company.
- 7. Returned Items.** Secured Party and Company understand and agree that the face amount ("Returned Item Amount") of each Returned Item will be paid by Bank debiting the Collateral Account to which the Returned Item was originally credited, without prior notice to Secured Party or Company. As used in this Agreement, the term "Returned Item" means (i) any item deposited to a Collateral Account and returned unpaid, whether for insufficient funds or for any other reason, and without regard to timeliness of the return or the occurrence or timeliness of any drawee's notice of non-payment; (ii) any item subject to a claim against Bank of breach of transfer or presentment warranty under the Uniform Commercial Code (as adopted in the

applicable state) or Regulation CC (12 C.F.R. §229), as in effect from time to time; (iii) any automated clearing house (“ACH”) entry credited to a Collateral Account and returned unpaid or subject to an adjustment entry under applicable clearing house rules, whether for insufficient funds or for any other reason, and without regard to timeliness of the return or adjustment; (iv) any credit to a Collateral Account from a merchant card transaction, against which a contractual demand for chargeback has been made; and (v) any credit to a Collateral Account made in error. Company agrees to pay all Returned Item Amounts immediately on demand, without setoff or counterclaim, to the extent there are not sufficient funds in the applicable Collateral Account to cover the Returned Item Amounts on the day Bank attempts to debit them from the Collateral Account. After Bank receives an Access Termination Notice, Secured Party agrees to pay all Returned Item Amounts within thirty (30) calendar days after written demand, without setoff or counterclaim, to the extent that (i) the Returned Item Amounts are not paid in full by Company within five (5) calendar days after demand on Company by Bank, and (ii) Secured Party has received proceeds from the corresponding Returned Items under this Agreement; provided that Secured Party’s liability for payment of Returned Items shall not exceed the aggregate amount of proceeds received by Secured Party with respect to the corresponding Returned Item under this Agreement

**8. Settlement Items.** Secured Party and Company understand and agree that the face amount (“Settlement Item Amount”) of each Settlement Item will be paid by Bank debiting the applicable Collateral Account, without prior notice to Secured Party or Company. As used in this Agreement, the term “Settlement Item” means (i) each check or other payment order drawn on or payable against any controlled disbursement account or other deposit account at any time linked to any Collateral Account by a zero balance account connection or other automated funding mechanism (each a “Linked Account”), which Bank cashes or exchanges for a cashier’s check or official check in the ordinary course of business prior to receiving an Access Termination Notice and having had a reasonable opportunity (not to exceed two (2) Business Days) to act on it, and which is presented for settlement against the Collateral Account (after having been presented against the Linked Account) after Bank receives the Access Termination Notice, (ii) each check or other payment order drawn on or payable against a Collateral Account, which, on the Business Day Bank receives an Access Termination Notice, Bank cashes or exchanges for a cashier’s check or official check in the ordinary course of business after Bank’s cutoff time for posting, (iii) each ACH credit entry initiated by Bank, as originating depository financial institution, on behalf of Company, as originator, prior to Bank having received an Access Termination Notice and having had a reasonable opportunity (not to exceed two (2) Business Days) to act on it, which ACH credit entry settles after Bank receives an Access Termination Notice, and (iv) any other payment order drawn on or payable against a Collateral Account or any Linked Account, which Bank has paid or funded prior to receiving an Access Termination Notice and having had a reasonable opportunity (not to exceed two (2) Business Days) to act on it, and which is first presented for settlement against the Collateral Account in the ordinary course of business after Bank receives the Access Termination Notice and has transferred Collateral Account Funds to Secured Party under this Agreement. Company agrees to pay all Settlement Item Amounts immediately on demand, without setoff or counterclaim, to the extent there are not sufficient funds in the applicable Collateral Account to cover the Settlement Item Amounts on the day they are to be debited from the Collateral Account. Secured Party agrees to pay all Settlement Item Amounts within thirty (30) calendar days after written demand, without setoff or counterclaim, to the extent that (i) the Settlement Item Amounts are not paid in full by Company within five (5) calendar days after demand on Company by Bank, and (ii) Secured Party has received Collateral Account Funds under this Agreement; provided that Secured Party’s liability for payment of Settlement Items shall not exceed the aggregate amount of Collateral Account Funds received by Secured Party under this Agreement.

**9. Bank Fees.** Company agrees to pay all Bank’s fees and charges for the maintenance and administration of the Collateral Accounts and for the treasury management and other account

services provided with respect to the Collateral Accounts and any Lockboxes (collectively "Bank Fees"), including, but not limited to, the fees for (a) Balance Reports provided on the Collateral Accounts, (b) funds transfer services received with respect to the Collateral Accounts, (c) lockbox processing services, (d) Returned Items, (e) funds advanced to cover overdrafts in the Collateral Accounts (but without Bank being in any way obligated to make any such advances), and (f) duplicate bank statements. The Bank Fees will be paid by Bank debiting one or more of the Collateral Accounts on the Business Day that the Bank Fees are due, without notice to Secured Party or Company. If there are not sufficient funds in the Collateral Accounts to cover fully the Bank Fees on the Business Day Bank attempts to debit them from the Collateral Accounts, such shortfall or the amount of such Bank Fees will be paid by Company to Bank, without setoff or counterclaim, within five (5) calendar days after demand from Bank. Secured Party agrees to pay any Bank Fees which accrue after Bank receives an Access Termination Notice, within thirty (30) calendar days after written demand, without setoff or counterclaim, to the extent such Bank Fees are not paid in full by Company within five (5) calendar days after demand on Company by Bank.

10. **Account Documentation.** Except as specifically provided in this Agreement, Secured Party and Company agree that the Collateral Accounts will be subject to, and Bank's operation of the Collateral Accounts will be in accordance with, the terms of Bank's applicable deposit account agreement governing the Collateral Accounts ("Account Agreement"). All documentation referenced in this Agreement as governing any Collateral Account or the processing of any Remittances is hereinafter collectively referred to as the "Account Documentation". In the event of any conflict between any term or provision of this Agreement and any term or provision of the Account Documentation, the terms and provisions of this Agreement shall control.
11. **Partial Subordination of Bank's Rights.** Bank hereby subordinates to the security interests of the Secured Party in the Collateral Accounts (i) any security interest which Bank may have or acquire in the Collateral Accounts, and (ii) any right which Bank may have or acquire to set off or otherwise apply any Collateral Account Funds against the payment of any indebtedness from time to time owing to Bank from Company, except, in each case, for debits to the Collateral Accounts permitted under this Agreement for the payment of Returned Item Amounts, Settlement Item Amounts or Bank Fees.
12. **Bankruptcy Notice; Effect of Filing.** If Bank at any time receives notice of the commencement of a bankruptcy case or other insolvency or liquidation proceeding by or against Company, Bank will continue to comply with its obligations under this Agreement, except to the extent that any action required of Bank under this Agreement is prohibited under applicable bankruptcy laws or regulations or is stayed pursuant to the automatic stay imposed under the United States Bankruptcy Code or by order of any court or agency. With respect to any obligation of Secured Party hereunder which requires prior demand on Company, the commencement of a bankruptcy case or other insolvency or liquidation proceeding by or against Company will automatically eliminate the necessity of such demand on Company by Bank, and will immediately entitle Bank to make demand on Secured Party with the same effect as if demand had been made on Company and the time for Company's performance had expired.
13. **Legal Process, Legal Notices and Court Orders.** Bank will comply with any legal process, legal notice or court order it receives in relation to a Collateral Account if Bank determines in its sole discretion that the legal process, legal notice or court order is legally binding on it.
14. **Indemnification.** Company will indemnify, defend and hold harmless Bank, its officers, directors, employees, and agents (collectively, the "Indemnified Parties") from and against any and all claims, demands, losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) (collectively "Losses and Liabilities") Bank may suffer or incur as a result of or in connection with (a) Bank complying with any binding legal process, legal notice or court order referred to in the immediately preceding section of this Agreement, (b) Bank following any

instruction or request of Secured Party, including but not limited to any Access Termination Notice or Disposition Instructions, or (c) Bank complying with its obligations under this Agreement, except, in each case, to the extent such Losses and Liabilities are caused by Bank's gross negligence or willful misconduct. To the extent such obligations of indemnity are not satisfied by Company within five (5) days after demand on Company by Bank, Secured Party will indemnify, defend and hold harmless Bank and the other Indemnified Parties against any and all Losses and Liabilities Bank may suffer or incur as a result of or in connection with Bank following any instruction or request of Secured Party as set forth in clause (b) of the immediately preceding sentence, except to the extent such Losses and Liabilities are caused by Bank's gross negligence or willful misconduct.

- 15. Bank's Responsibility.** This Agreement does not create any obligations of Bank, and Bank makes no express or implied representations or warranties with respect to its obligations under this Agreement, except for those expressly set forth herein. In particular, Bank need not investigate whether Secured Party is entitled under Secured Party's agreements with Company to give an Access Termination Notice or Disposition Instructions. Bank may rely on any and all notices and communications it reasonably believes are given by the appropriate party. Bank will not be liable to Company, Secured Party or any other party for any Losses and Liabilities caused by (i) circumstances beyond Bank's reasonable control (including, without limitation, computer malfunctions, interruptions of communication facilities, labor difficulties, acts of God, wars, or terrorist attacks) or (ii) any other circumstances, except to the extent that such Losses and Liabilities are directly caused by Bank's gross negligence or willful misconduct. In no event will any party be liable for any indirect, special, consequential or punitive damages, whether or not the likelihood of such damages was known to such party, and regardless of the form of the claim or action, or the legal theory on which it is based. Any action against Bank by Company or Secured Party under or related to this Agreement must be brought within twelve (12) months after the cause of action accrues.
- 16. Termination.** This Agreement may be terminated by Secured Party or Bank at any time by either of them giving thirty (30) calendar days prior written notice of such termination to the other parties to this Agreement at their contact addresses specified after their signatures to this Agreement; provided, however, that this Agreement may be terminated (i) immediately upon written notice from Bank to Company and Secured Party should Company or Secured Party fail to make any payment when due to Bank from Company or Secured Party under the terms of this Agreement; provided that if Company fails to make any payment when due to Bank from Company under the terms of this Agreement before the delivery of an Access Termination Notice, this Agreement may only be terminated by Bank upon five (5) Business Days prior written notice from Bank to Company and Secured Party provided such payment shall not have been received by Bank within such five (5) Business Day period, or (ii) immediately upon written notice from Secured Party to Bank on termination or release of Secured Party's security interest in the Collateral Accounts; provided that any notice from Secured Party under clause (ii) of this sentence must contain Secured Party's acknowledgement of the termination or release of its security interest in the Collateral Accounts. Company's and Secured Party's respective obligations to report errors in funds transfers and bank statements and to pay Returned Item Amounts, Settlement Item Amounts, and Bank Fees, as well as the indemnifications made, and the limitations on the liability of Bank accepted, by Company and Secured Party under this Agreement will continue after the termination of this Agreement with respect to all the circumstances to which they are applicable, existing or occurring before such termination, and any liability of any party to this Agreement, as determined under the provisions of this Agreement, with respect to acts or omissions of such party prior to such termination will also survive such termination. Upon any termination of this Agreement which occurs after Bank has received an Access Termination Notice and has had a reasonable opportunity (not to exceed two (2) Business Days) to act on it, (i) Bank will transfer all collected and available balances in

the Collateral Accounts on the date of such termination in accordance with Secured Party's written instructions, and (ii) Bank will close any Lockbox and forward any mail received at the Lockbox unopened to such address as is communicated to Bank by Secured Party under the notice provisions of this Agreement for a period of three (3) months after the effective termination date, unless otherwise arranged between Secured Party and Bank, provided that Bank's fees with respect to such disposition must be prepaid directly to Bank at the time of termination by cashier's check payable to Bank or other payment method acceptable to Bank in its sole discretion.

17. **Modifications, Amendments, and Waivers.** This Agreement may not be modified or amended, or any provision thereof waived, except in a writing signed by all the parties to this Agreement.
18. **Notices.** All notices from one party to another must be in writing, must be delivered to Company, Secured Party and/or Bank at their respective contact addresses specified after their signatures to this Agreement, or any other address of any party communicated to the other parties in writing, and will be effective on receipt. Any notice sent by a party to this Agreement to another party pursuant to this Agreement must also be sent to all other parties to this Agreement. Bank is authorized by Company and Secured Party to act on any instructions or notices received by Bank if (a) such instructions or notices purport to be made in the name of Secured Party, (b) Bank reasonably believes that they are so made, and (c) they do not conflict with the terms of this Agreement as such terms may be amended from time to time, unless such conflicting instructions or notices are supported by a court order.
19. **Successors and Assigns.** Neither Company nor Secured Party may assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of Bank, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Secured Party may transfer its rights and duties under this Agreement to (i) a transferee to which, by contract or operation of law, Secured Party transfers substantially all of its rights and duties under the financing or other arrangements between Secured Party and Company, or (ii) if Secured Party is acting as a representative in whose favor a security interest is created or provided for, a transferee that is a successor representative; provided that as between Bank and Secured Party, Secured Party will not be released from its obligations under this Agreement unless and until Bank receives any such transferee's binding written agreement to assume all of Secured Party's obligations hereunder. Bank may not assign or transfer its rights or obligations under this Agreement to any person or entity without the prior written consent of Secured Party, which consent will not be unreasonably withheld or delayed; provided, however, that no such consent will be required if such assignment or transfer takes place as part of a merger, acquisition or corporate reorganization affecting Bank.
20. **Governing Law.** This Agreement will be governed by and be construed in accordance with the laws of the State of New York, without regard to conflict of laws principles. The State of New York will also be deemed to be Bank's jurisdiction, for purposes of Article 9 of the Uniform Commercial Code as it applies to this Agreement.
21. **Severability.** To the extent that the terms of this Agreement are inconsistent with, or prohibited or unenforceable under, any applicable law or regulation, they will be deemed ineffective only to the extent of such prohibition or unenforceability, and will be deemed modified and applied in a manner consistent with such law or regulation. Any provision of this Agreement which is deemed unenforceable or invalid in any jurisdiction will not affect the enforceability or validity of the remaining provisions of this Agreement or the same provision in any other jurisdiction.

- 22. Counterparts.** This Agreement may be executed in any number of counterparts each of which will be an original with the same effect as if the signatures were on the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by telecopier or electronic image scan transmission (such as a "pdf" file) will be effective as delivery of a manually executed counterpart of the Agreement.
- 23. Entire Agreement.** This Agreement, together with the Account Documentation, contains the entire and only agreement among all the parties to this Agreement and between Bank and Company, on the one hand, and Bank and Secured Party, on the other hand, with respect to (a) the interest of Secured Party in the Collateral Accounts and Collateral Account Funds, and (b) Bank's obligations to Secured Party in connection with the Collateral Accounts and Collateral Account Funds.
- 24. Waiver of Jury Trial.** Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or any other theory).
- 25. Waiver of Sovereign Immunity.**

(a) Company, in conformity with Sections 1(C) and 5(C)(10) of the Authority Ordinance, hereby expressly, unequivocally and irrevocably waives its sovereign immunity (and any defense based thereon) from any suit, action, arbitration or other legal proceedings or from any legal process, in each case of any nature whether such action be brought in or arise under law, equity, contract, tort or statute (inclusive of claims and counterclaims, actions for equitable or provisional relief and to compel arbitration, and whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution, exercise of contempt powers, or otherwise) (an "Action") and, further, waives any sovereign immunity from any judgment or order related thereto, provided that:

(i) the Action is brought by Secured Party or Bank or any of their respective successors in interest or assigns or any other person who is entitled to the benefits of this Agreement (including without limitation the indemnitees referred to herein) (collectively the "Grantees");

(ii) [reserved]

(iii) the Action (A) arises under this Agreement or Company's obligations hereunder or thereunder, including, without limitation, any Action to interpret or enforce or otherwise seek or obtain relief with respect to the provisions of this Agreement or otherwise in connection herewith, in connection with the obligations of Company hereunder or in connection with the transactions contemplated hereby, whether such rights arise in law or equity, (B) is to enforce and execute any order, judgment or ruling resulting from such an Action or arbitration award, or (C) to adjudicate any claim brought by a Grantee arising under the laws of the Tribe;

(iv) the Action may seek all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief, but in any event shall not include a claim for punitive or consequential damages; provided that nothing contained in this clause (iv) or Section 26(e) below shall limit Company's indemnity and reimbursement obligations hereunder to the extent such



punitive or consequential damages are included in any third party claim in connection with which an indemnified party is entitled to indemnification hereunder; and

(v) any order, judgment, ruling or other remedies related to an Action shall be enforceable only against the assets described under Section 25(b).

(b) The obligations of Company hereunder are general obligations of Company; provided, however, that no recourse may be made against Protected Assets.

**26. Consents to Jurisdiction; Waivers of Venue; Exhaustion; Service of Process.**

(a) Consent to Jurisdiction. Subject to the foregoing limitations on Company's waiver of sovereign immunity, Company hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court, Southern District of New York, and any appellate court to which any appeals therefrom are available (collectively, the "New York Federal Courts") and the courts of the State of New York sitting in the City of New York, County of New York, and any appellate court to which any appeals therefrom are available (collectively, the "New York State Courts") and the United States District Court, Eastern District of California, and any appellate court to which any appeals therefrom are available (collectively, the "California Federal Courts" and, together with the New York Federal Courts, the "Federal Courts") and the courts of the State of California and any appellate court to which any appeals therefrom are available (collectively, the "California State Courts"), or if none of the foregoing courts accepts jurisdiction over an Action, then the tribal courts of the Tribe for the limited purpose of an action to compel arbitration or enforce an arbitration award or an action brought by Secured Party to adjudicate any claim under the Indian Civil Rights Act, 25 U.S.C. § 1301 et seq. or other right under tribal law (collectively with the Federal Courts, the New York State Courts and the California State Courts, the "Consented Courts") and Company irrevocably and unconditionally agrees that all claims in respect of any Action shall be heard and determined in such Consented Court as set forth herein and agrees to be bound by the decisions of any such court. Notwithstanding the foregoing, Company agrees that any final judgment, arbitration award or order in any such actions or proceedings shall be conclusive and may be enforced by any court of any other jurisdiction, including, without limitation, the tribal courts of the Tribe. Each Tribal Party agrees that a Tribal police officer, Tribal law enforcement official or licensed peace officer (each a "Tribal Officer") is authorized to execute such judgment, award or order and that any such Tribal Officer, and any other government or other governmental authorities who have the right and duty under applicable law shall take any and all action authorized or ordered by any such judgment, award or order, including without limitation, entering the real property of the Tribe or Company and removing or permitting the removal of any personal property in giving effect to any judgment entered. In addition, with respect to any collateral, Company agrees that Secured Party or Bank may also enforce its rights and remedies with respect to the collateral (whether judicially or non-judicially) in any jurisdiction in which such collateral or the Tribe or Company is located.

(b) Waiver of Venue. Company hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any Action arising out of or relating to this Agreement or the transactions contemplated hereunder in any Federal Court, New York State Court or California State Court. Company irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such Action in any such court.

(c) Tribal Exhaustion/Tribal Court Actions. Company hereby expressly, unconditionally and irrevocably waives, to the fullest extent it may legally and effectively do so, any right Company may otherwise have to require that any Action be considered or heard in any

court (other than as set forth in Section 26(a)), including without limitation considered or heard first in any tribal court or forum of the Tribe, now or hereafter existing, whether because of the doctrine of exhaustion of tribal remedies or as a matter of comity or abstention. Company shall not agree to commence any Action in any tribal court or forum of the Tribe without the consent of the other parties to such Action.

(d) Service of Process. Company hereby irrevocably consents to service of process in the manner provided for notices in this Agreement provided that nothing in this Agreement will affect the right of any party hereto or thereto to serve process in any other manner permitted by law. In addition to and without limiting the generality of the foregoing, Company consents and agrees that, notwithstanding Tribal Court Ordinance Article V1, Ch. 3 or any other tribal law to the contrary, process against Company shall also be effective if served (A) on the chairperson of Company, or (B) by sending two copies of the process by registered or certified mail addressed to the "General Counsel" of Company, at the address specified after Company's name on the signature pages hereto.

(e) Secured Parties/Indemnitees. The waivers and consents described in Sections 24, 25, 26, and 27 shall inure to the benefit of Secured Party, Bank and each other person who is entitled to the benefits of this Agreement (including without limitation the indemnitees described herein). Secured Party, Bank and such other persons shall have and be entitled to all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief (other than, subject to the proviso in Section 25(a)(iv), punitive or consequential damages). The waivers of sovereign immunity and consents to jurisdiction contained in Section 25 and this Section 26 are irrevocable.

(f) California Judicial Reference. If any Action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by this Agreement, the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such Action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any party to such proceeding, any such issues pertaining to a "provisional remedy" as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court. Without limiting the generality of the other provisions of this Agreement, Company shall be solely responsible to pay all fees and expenses of any referee appointed in such action or proceeding.

(g) Miscellaneous. Notwithstanding any of the foregoing, nothing in this Agreement will limit the ability of Secured Party or Bank or their respective successors and assigns, to move to compel arbitration or move to stay or dismiss a lawsuit in favor of arbitration, and Company's waiver of sovereign immunity will expressly extend to such actions. Company hereby agrees, consistent with Section 18 of the Authority Ordinance, that its limited waiver of sovereign immunity and other waivers described in Sections 25 and 26 are irrevocable and agrees not to revoke or further limit, in whole or in part, its limited waiver of sovereign immunity or the waivers described in these sections or in any way attempt to revoke or further limit, in whole or in part, such limited waiver of sovereign immunity. In the event that Company (i) revokes, further limits or attempts to revoke or further limit the limited waiver of sovereign immunity described in Sections 25 and 26, (ii) takes any action which is inconsistent with the waivers described in Sections 25 and 26 or (iii) fails to submit to the jurisdiction of the courts as described in Sections 25 and 26, Company hereby consents to the entry of appropriate injunctive relief.

## **27. Arbitration.**

(a) Invocation of Arbitration. At the election of (i) both Secured Party and Bank, or (ii) if none of the New York Federal Courts or the New York State Courts or the California Federal Courts or the California State Courts accept jurisdiction over an Action, either the Secured Party or the Bank, any controversy or claim between or among the parties to this Agreement, whether arising in contract, tort or statute, including controversies and claims that arise out of or relate to this Agreement (including any renewals, extensions or modifications) shall be resolved by binding arbitration in New York, New York. For purposes of this Section 27 only, the term "Secured Party" and "Bank" shall also include any parent corporation, subsidiary or affiliate of Secured Party or Bank involved in the servicing, management or administration of the collateral or any obligation described or evidenced by this Agreement. The arbitration shall be conducted in accordance with the procedural rules of the Federal Arbitration Act (Title 9, U.S. Code) and the regulations promulgated thereunder, notwithstanding any choice of law provision in this Agreement, and under the rules and procedures for the arbitration of financial services disputes of the American Arbitration Association or any successor thereof ("AAA"); provided, however, that the arbitration shall be heard and determined by a panel of three arbitrators. Any Grantee to this Agreement claiming the neglect or refusal of another party to proceed with an arbitration hereunder may make application to any court of competent jurisdiction as set forth in Section 26(a) for an order directing the parties to proceed with the arbitration in compliance with this Section 27. In the event such an action to compel arbitration is commenced in the courts of the Tribe, the court shall order the parties to arbitration in accordance with the provisions of this Section 27 and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

(b) Confirmation and Enforcement of Arbitration Award. The arbitrator(s) shall give effect to statutes of limitation in determining any claim. At any time within one year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to any court of competent jurisdiction as set forth in Section 26(a) for an order confirming the award. An arbitration award shall not be subject to review or modification by a court for any reason other than in the circumstances described in 9 U.S.C. §§ 9, 10 and 11. The judgment confirming an award shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in a court of competent jurisdiction as set forth in Section 26(a). When the award requires the performance of any other act than the payment of money, the court shall direct the enforcement thereof in the manner provided by law.

(c) Provisional Remedies. No provision of this Section 27 shall limit the right of any party to (A) exercise self-help remedies, (B) initiate judicial or non-judicial foreclosure against any collateral, (C) exercise any judicial or power of sale rights, or (D) act in a court of competent jurisdiction as set forth in Section 26(a) to obtain an interim remedy, such as but not limited to, injunctive relief or writ of possession, or additional or supplemental remedies, in each case before, after, or during the pendency of any arbitration or other proceeding. The exercise of a remedy does not waive the right of Secured Party or Bank to resort to arbitration.

**28. Management Activities.** Notwithstanding any provision in this Agreement, or any other right to enforce the provisions of this Agreement, neither Secured Party nor Bank shall engage in any of the following: planning, organizing, directing, coordinating, or controlling all or any portion of the business of the Company (collectively, "Management Activities"), including, but not limited to:

(a) the training, supervision, direction, hiring, firing, retention, compensation (including benefits) of any employee (whether or not a management employee) or contractor;

(b) any working or employment policies or practices;

- (c) the hours or days of operation;
- (d) any accounting systems or procedures;
- (e) any advertising, promotions or other marketing activities;
- (f) the purchase, lease, or substitution of any gaming device or related equipment or software, including player tracking equipment;
- (g) the vendor, type, theme, percentage of pay-out, display or placement of any gaming device or equipment; or
- (h) budgeting, allocating, or conditioning payments of Company's operating expenses;

provided, however, that upon the occurrence of a default under this Agreement, neither Secured Party nor Bank will be in violation of the foregoing restriction solely because it: (i) enforces compliance with any term in this Agreement that does not require the gaming operation to be subject to any third-party decision-making as to any Management Activities; (ii) requires that all or any portion of the revenues securing the loans under the Credit Agreement be applied to satisfy valid terms of this Agreement; or (iii) otherwise forecloses on all or any portion of the collateral securing the secured obligations under the Security Agreement.

Notwithstanding any other possible construction of any provision(s) contained in this Agreement, it is agreed that within the meaning of the IGRA: (a) this Agreement does not and shall not provide for the management of all or any part of the gaming business by any person other than Company or the Tribe or deprive Company or the Tribe of the sole proprietary interest and responsibility for the conduct of the business of the Company; and (b) none of Secured Party or Bank (or any of their successors, assigns or agents) will exercise any remedy or otherwise take any action under or in connection with this Agreement in a manner that would constitute management of all or any part of the business of the Company or that would deprive Company or the Tribe of the sole proprietary interest and responsibility for the conduct of the business of the Company.

**29. Section 81 Compliance.** For the avoidance of any doubt, it is acknowledged that this Agreement is not intended to grant and does not grant a Lien on any real property owned by Company or the Tribe or any agencies or instrumentalities of the Tribe, and no interpretation shall be given to this Agreement which would have the effect of such an encumbrance. Notwithstanding any right of Secured Party or Bank in this Agreement, or any requirements or restrictions imposed on Company in this Agreement, any right, requirement or restriction that "encumbers Indian land" within the meaning of 25 U.S.C. § 81, shall not be effective for longer than six years, 364 days.

**30. Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

"Authority Ordinance" means the ordinance establishing and governing Company, which was duly and validly adopted by Resolution 2004-18 of the Council on May 14, 2004, as amended by Resolution 2007-32 of the Council on June 25, 2007, and as further amended by Resolution 2010-69 of the Council on September 30, 2010.

"Compact" means the Amended and Restated Compact between the State of California and the Tribe dated November 15, 2012, deemed approved by the Secretary of the Interior of the United States on July 15, 2013, notice of which was published by the Secretary of the Interior of the

United States in the Federal Register on July 23, 2015.

“Credit Agreement” means that certain Credit Agreement, dated as of the date hereof (as amended, restated, amended and restated, supplemented or otherwise modified, renewed, replaced or refinanced from time to time) by and among Company, the Tribe, the lenders from time to time party thereto and Secured Party.

“Gaming Commission” means the gaming regulatory authority of the Tribe exercising regulatory powers under the Gaming Ordinance.

“Gaming Ordinance” means that certain Gaming Ordinance of the Shingle Springs Band for Gaming on Tribal Lands, which was duly and validly adopted by the Tribal Council of the Tribe on August 18, 2010, by Tribal Council Resolution 2010-58 and approved by the Chairperson of the National Indian Gaming Commission on November 4, 2010, as the same may be amended from time to time in accordance with IGRA.

“IGRA” means the federal Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. §§ 2701, et seq.

“Protected Assets” means (a) any interests in real property held in trust by the United States of America for the benefit of the Tribe, or owned by the Tribe in fee and subject to restrictions by the United States of America against alienation, and any improvements, fixtures or accessions to such property, (b) any assets against which it would be a violation of federal law, state law or the Compact to enforce remedies, (c) any assets belonging to or held in trust for individual members of the Tribe, including assets credited to trust accounts for minors or legally incompetent persons, (d) assets credited to any special revenue funds which are subject to restrictions in connection with the Tribe’s administration of any state or federal grants or programs and (e) all personal property constituting assets of the Gaming Commission and reasonably required to be owned or otherwise in the possession of the Gaming Commission for the proper discharge of the Gaming Commission’s responsibilities under the Gaming Ordinance.

[SIGNATURE PAGES FOLLOW]

This Agreement has been signed by the duly authorized officers or representatives of Company, Secured Party and Bank on the date specified below.

**Date: August 29, 2013**

<b>Collateral Account Numbers:</b>	<b>4121561039, 4121558779, 4121558787, 4121805444</b>
<b>Destination Account Number:</b>	_____
<b>Bank of Destination Account:</b>	<b>[Insert bank name <u>and</u> bank ABA number]</b>
<b>Account name:</b>	_____
<b>Reference Data:</b>	_____
<b>Frequency (Daily or Weekly):</b>	_____
<b>Balance (Intraday or Start of Day):</b>	_____

**SHINGLE SPRINGS TRIBAL GAMING  
AUTHORITY**

**BANK OF AMERICA, N.A., as collateral  
agent**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Address for Notices:**

**Address for Notices:**

Shingle Springs Tribal Gaming Authority  
\_\_\_\_\_

1 Red Hawk Parkway  
\_\_\_\_\_

Placerville, California 95667-8639  
\_\_\_\_\_

Attn: David Mustard  
\_\_\_\_\_

Fax: 530.672.5130  
\_\_\_\_\_

Bank of America, N.A.  
\_\_\_\_\_

901 Main Street  
\_\_\_\_\_

Dallas, Texas 75202  
\_\_\_\_\_

Attn: Justin Lien  
\_\_\_\_\_

Fax: 214.290.9540  
\_\_\_\_\_

[SIGNATURE PAGES CONTINUE]

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION**

By: \_\_\_\_\_

Name: Felis Gallues \_\_\_\_\_

Title: \_\_\_\_\_

**Address for Notices:**

Wells Fargo Bank, National Association \_\_\_\_\_

Mail Address Code: D1129-072 \_\_\_\_\_

301 South Tryon Street, 7<sup>th</sup> Floor \_\_\_\_\_

Charlotte, North Carolina 28282-1915 \_\_\_\_\_

Attn: DACA Team \_\_\_\_\_

Fax: 704.374.4224 \_\_\_\_\_

**with copy to:**

Wells Fargo Bank, National Association \_\_\_\_\_

Mail Address Code: A4649-027 \_\_\_\_\_

5340 Kietzke Lane, 2<sup>nd</sup> Floor \_\_\_\_\_

Reno, Nevada 89511 \_\_\_\_\_

Attn: Felis Gallues \_\_\_\_\_

Fax: 775.689.6026 \_\_\_\_\_

**EXHIBIT C  
to Security Agreement**

**FORM OF  
SECURITIES ACCOUNT  
CONTROL AGREEMENT**

This SECURITIES ACCOUNT CONTROL AGREEMENT dated as of \_\_\_\_\_, 20\_\_ (this "Agreement"), is entered into by and among [\_\_\_\_\_] (the "Grantor"), BANK OF AMERICA, N.A., as Collateral Agent for the benefit of the Secured Parties (the "Secured Party") and [\_\_\_\_\_] in its capacity as a "securities intermediary" (as defined in Section 8-102 of the UCC (in such capacity, the "Financial Institution")). Capitalized terms used but not defined herein shall have the meanings assigned in the Security Agreement, dated as August 29, 2013, by and between the Grantor, the Secured Party, and the other parties thereto (the "Security Agreement"). All references herein to the "UCC" shall mean the Uniform Commercial Code as in effect in the State of New York.

**RECITALS**

WHEREAS, the Grantor has granted to the Secured Party a security interest in the Pledged Accounts (as hereinafter defined) pursuant to the Security Agreement;

WHEREAS, the parties hereto are entering into this agreement to perfect and ensure the priority of such security interest;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**AGREEMENT**

**SECTION 1. Establishment and Maintenance of Collateral Accounts.**

1.1 The Financial Institution hereby represents and warrants that it has established and currently maintains the accounts listed on Schedule 1 hereto and that the Grantor is its sole entitlement holder with respect to each such account. Each such account and any successor account and all other securities accounts that the Grantor now or hereafter maintains with the Financial Institution, being referred to herein individually as a "Pledged Account" and collectively as the "Pledged Accounts." The Financial Institution covenants and agrees that it shall not change the name or account number of any Pledged Account without the prior written consent of the Secured Party.

1.2 The Financial Institution represents and warrants that each of the Pledged Accounts are a "securities account" (as defined in Section 8-501 of the UCC).

1.3 The Financial Institution covenants and agrees that: (a) all securities or other property underlying any financial assets credited to any Pledged Account shall be



registered in the name of the Financial Institution, indorsed to the Financial Institution or indorsed in blank or credited to another securities account maintained in the name of the Financial Institution; (b) in no case will any financial asset credited to any Pledged Account be registered in the name of the Grantor, payable to the order of the Grantor or specially indorsed to the Grantor except to the extent the foregoing have been specially indorsed to the Financial Institution or in blank; and (c) all property delivered to the Financial Institution pursuant to the Security Agreement will be promptly credited to one of the Pledged Accounts.

**SECTION 2. “Financial Assets” Election.** The Financial Institution hereby agrees that each item of property (including, without limitation, all Investments, any investment property, financial asset, security, instrument or cash) credited to any Pledged Account shall be treated as a “financial asset” within the meaning of Section 8-102(a)(9) of the UCC.

**SECTION 3. Secured Party’s Control of the Pledged Accounts.** If at any time after the Secured Party has delivered to the Financial Institution a Notice of Exclusive Control in substantially the form set forth in Exhibit A hereto (a “Notice of Exclusive Control”) the Financial Institution shall receive from the Secured Party any entitlement order (i.e., an order directing transfer or redemption of any financial asset relating to a Pledged Account), the Financial Institution shall comply with such entitlement order without further consent by the Grantor or any other person. If the Grantor is otherwise entitled to give any entitlement orders with respect to the Pledged Account in accordance with this Section 3 and such entitlement orders conflict with any entitlement orders of the Secured Party, the Financial Institution shall comply with the entitlement orders issued by the Secured Party.

**SECTION 4. Grantor’s Access to the Account.** If at any time the Secured Party has delivered to the Financial Institution a Notice of Exclusive Control in substantially the form set forth in Exhibit A hereto, then the Financial Institution agrees that thereafter until the Secured Party has informed the Financial Institution in writing that the Notice of Exclusive Control has been withdrawn, it will take all directions with respect to the Pledged Accounts solely from the Secured Party and shall not comply with entitlement orders of the Grantor or any other person.

**SECTION 5. Subordination of Lien; Waiver of Set-Off.** In the event that the Financial Institution has or subsequently obtains by agreement, by operation of law or otherwise a security interest in any Pledged Account or any financial assets, cash or other property credited thereto, the Financial Institution hereby agrees that such security interest shall be subordinate to the security interest of the Secured Party. The financial assets, money and other items credited to any Pledged Account will not be subject to deduction, set-off, banker’s lien, or any other right in favor of any person other than the Secured Party (except that the Financial Institution may set off (i) all amounts due to the Financial Institution in respect of customary fees and expenses for the routine maintenance and operation of the respective Pledged Account and (ii) the face amount of any checks which have been credited to such Pledged Account but are subsequently returned unpaid because of uncollected or insufficient funds).

**SECTION 6. Additional Provisions Regarding Maintenance of Accounts.** The Financial Institution covenants and agrees:

6.1 Statements and Confirmations. The Financial Institution will promptly send copies of all statements, confirmations and other correspondence concerning any Pledged Account and/or any financial assets credited thereto simultaneously to each of the Grantor and the Secured Party at the address for each set forth in Section 9.6 of this Agreement.

6.2 Tax Reporting. All items of income, gain, expense and loss recognized in any Pledged Account, shall be reported to the Internal Revenue Service and all state and local taxing authorities under the name and taxpayer identification number of the Grantor.

6.3 Voting Rights. At any time during which the Grantor is entitled to give entitlement orders pursuant to Section 4 hereof, the Grantor shall direct the Financial Institution with respect to the voting of any financial assets credited to the Pledged Accounts. At all other times, the Secured Party shall have the exclusive right to vote with respect to any such financial assets.

6.4 Permitted Investments. At any time during which the Grantor is entitled to give entitlement orders pursuant to Section 4 hereof, the Grantor shall direct the Financial Institution with respect to the selection of investments to be made for any Pledged Account that is a securities account; provided, however, that the Financial Institution shall not honor any instruction to purchase any investments other than investments of a type describe on Exhibit B hereto.

**SECTION 7. Additional Representation and Warranty of the Financial Institution.**

The Financial Institution represents and warrants that this Agreement is the legal, valid, binding and enforceable obligation of the Financial Institution.

**SECTION 8. Indemnification of Financial Institution.** The Grantor and the Secured Party hereby agree that (a) the Financial Institution is released from any and all liabilities to the Grantor and the Secured Party arising from the terms of this agreement and the compliance of the Financial Institution with the terms hereof, except to the extent that such liabilities arise from the Financial Institution's negligence, and (b) the Grantor, its successors and assigns shall at all times indemnify and save harmless the Financial Institution from and against any and all claims, actions and suits of others arising out of the terms of this agreement or the compliance of the Financial Institution with the terms hereof, except to the extent that such arises from the Financial Institution's negligence, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this agreement.

**SECTION 9. GENERAL PROVISIONS**

9.1 CHOICE OF LAW. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE GRANTOR, AND THE SECURED PARTY HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS OF THE LAWS OF THE STATE OF NEW YORK, OTHER THAN SECTION 5-1401 and 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW). The Pledged Accounts shall be governed by the laws of the State of New York.

9.2 WAIVER OF JURY TRIAL. The Grantor hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or any other theory). The Grantor (a) certifies that no representative, agent or attorney of any other Person has represented, expressly or otherwise, that such other Person would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 9.2.

9.3 Conflict with Other Agreements. The Financial Institution hereby represents, warrants, covenants and agrees that:

(a) There are no other agreements entered into between the Financial Institution and the Grantor with respect to any Pledged Account;

(b) It has not entered into, and until the termination of the this agreement will not enter into, any agreement with any other person relating the Pledged Accounts and/or any financial assets credited thereto pursuant to which it agrees or has agreed to comply with entitlement orders (as defined in Section 8-102(a)(8) of the UCC) of such other person;

(c) It has not entered into, and until the termination of this agreement will not enter into, any agreement with the Grantor or the Secured Party purporting to limit or condition the obligation of the Financial Institution to comply with entitlement orders; and

(d) In the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Agreement shall prevail;

9.4 Adverse Claims. The Financial Institution represents and warrants that, except for the claims and interest of the Secured Party and of the Grantor in the Pledged Accounts, it does not know of any security interest in, lien on or claim to, or other interest in, any Pledged Account or in any "financial asset" (as defined in Section 8-102(a) of the UCC) credited thereto. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Accounts or in any financial asset carried therein, the Financial Institution will promptly notify the Secured Party and the Grantor thereof.

9.5 Successors; Assignment. The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns, except that the neither the Grantor nor the Financial Institution may delegate their obligations hereunder without the prior written consent of the Secured Party. Additionally, in the event that the Secured Party is replaced as Collateral Agent under the Security Agreement, any entity that succeeds to such role shall be entitled to the benefits of this Agreement. The Secured Party agrees to send written notice to the Financial Institution of any such replacement.

9.6 Notices. Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means (including email) and electronic confirmation of error free receipt is received or two days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth below.

**Grantor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Attention: \_\_\_\_\_

**Secured Party:**

BANK OF AMERICA, N.A.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Attention: \_\_\_\_\_

**Financial Institution:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Attention: \_\_\_\_\_

Any party may change his address for notices by giving notice to the other parties hereto in the manner set forth above.

9.7 Amendment. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

9.8 Termination. The obligations of the Financial Institution to the Secured Party pursuant to this Agreement shall continue in effect until the security interests of the

Secured Party in each of the Pledged Accounts have been terminated pursuant to the terms of the Security Agreement and the Secured Party has notified the Financial Institution of such termination in writing. The Secured Party agrees to provide Notice of Termination in substantially the form of Exhibit C hereto to the Financial Institution upon the request of the Grantor on or after the termination of the Secured Party's security interest in the Pledged Accounts pursuant to the terms of the Security Agreement. The termination of this Agreement shall not terminate the Pledged Accounts or alter the obligations of the Financial Institution to the Grantor pursuant to any other agreement with respect to the Pledged Accounts.

9.9 Counterparts. This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

## **SECTION 10. INDIAN LAW PROVISIONS**

### 10.1 Waiver of Sovereign Immunity

(a) Waiver of Sovereign Immunity. Grantor, in conformity with Sections 1(C) and 5(C)(10) of the Authority Ordinance, hereby expressly, unequivocally and irrevocably waives its sovereign immunity (and any defense based thereon) from any suit, action, arbitration or other legal proceedings or from any legal process, in each case of any nature whether such action be brought in or arise under law, equity, contract, tort or statute (inclusive of claims and counterclaims, actions for equitable or provisional relief and to compel arbitration, and whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution, exercise of contempt powers, or otherwise) (an "**Action**") and, further, waives any sovereign immunity from any judgment or order related thereto, provided that:

(i) the Action is brought by the Secured Party or the Financial Institution or any of their respective successors in interest or assigns or any other person who is entitled to the benefits of this Agreement or any other Loan Documents (including without limitation the indemnitees referred to herein and in Section 10.04 of the Credit Agreement) (collectively the "**Grantees**");

(ii) reserved;

(iii) the Action (A) arises under this Agreement or any other Loan Document or Grantor's obligations hereunder or thereunder, including, without limitation, any Action to interpret or enforce or otherwise seek or obtain relief with respect to the provisions of this Agreement or the Loan Documents or otherwise in connection herewith or therewith, in connection with the obligations of Grantor hereunder or thereunder or in connection with the transactions contemplated hereby or thereby, whether such rights arise in law or equity, (B) is to enforce and execute any order, judgment or ruling resulting from such an Action or arbitration award, or (C) is to adjudicate any claim under the Indian Civil Rights Act, 25 U.S.C. § 1301 et seq. or any claim brought by a Grantee under the laws of the Tribe;

(iv) the Action may seek all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief, but in any event shall not include a claim for punitive or consequential damages; provided that nothing contained in this clause (iv) or Section 10.2(e) below shall limit the Borrower's indemnity and reimbursement obligations referred to in Section 10.04 of the Credit Agreement to the extent such punitive or consequential damages are included in any third party claim in connection with which an indemnified party is entitled to indemnification hereunder; and

(v) any order, judgment, ruling or other remedies related to an Action shall be enforceable only against the assets described under Section 10.1(b).

(b) The obligations of the Grantor hereunder are general Obligations of the Grantor, provided, however, that no recourse may be made against Protected Assets. The Obligations of the Tribe are limited recourse Obligations enforceable solely against the Recourse Assets; provided, however, that upon the occurrence and during the continuance of an Event of Default resulting from or related to any of the Tribal Provisions, the Obligations of the Grantor and the Tribe will also be enforceable against all other assets of the Tribe, other than Protected Assets; provided, further, however, that with respect to an Event of Default consisting solely of the receipt by the Tribe of a payment from the Borrower or the Grantors in violation of the Loan Documents, such recourse to the other assets of the Tribe shall be limited to the extent of such payment received by the Tribe.

## 10.2 Consents to Jurisdiction; Waivers of Venue; Exhaustion; Service of Process.

(a) Consent to Jurisdiction. Subject to the foregoing limitations on the Grantor's waiver of sovereign immunity, the Grantor hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court, Southern District of New York, and any appellate court to which any appeals therefrom are available (collectively, the "**New York Federal Courts**") and the courts of the State of New York sitting in the City of New York, County of New York, and any appellate court to which any appeals therefrom are available (collectively, the "**New York State Courts**") and the United States District Court, Eastern District of California, and any appellate court to which any appeals therefrom are available (collectively, the "**California Federal Courts**" and, together with the New York Federal Courts, the "**Federal Courts**") and the courts of the State of California and any appellate court to which any appeals therefrom are available (collectively, the "**California State Courts**"), or if none of the foregoing courts accepts jurisdiction over an Action, then the tribal courts of the Tribe for the limited purpose of an action to compel arbitration, enforce an arbitration award or to adjudicate any claim under the Indian Civil Rights Act, 25 U.S.C. § 1301 et seq. or any claim brought by a Grantee under the laws of the Tribe (collectively with the Federal Courts, the New York State Courts and the California State Courts, the "**Consented Courts**") and the Grantor

irrevocably and unconditionally agrees that all claims in respect of any Action shall be heard and determined in such Consented Court as set forth herein and agrees to be bound by the decisions of any such court. Notwithstanding the foregoing, the Grantor agrees that any final judgment, arbitration award or order in any such actions or proceedings shall be conclusive and may be enforced by any court of any other jurisdiction, including, without limitation, the tribal courts of the Tribe. Each Tribal Party agrees that a Tribal police officer, tribal law enforcement official or licensed peace officer (each a “**Tribal Officer**”) is authorized to execute such judgment, award or order and that any such Tribal Officer, an any other government or other governmental authorities who have the right and duty under applicable law shall take any and all action authorized or ordered by any such judgment, award or order, including without limitation, entering the real property of the Grantor or the Tribe and removing or permitting the removal of any personal property in giving effect to any judgment entered. In addition, with respect to any collateral, the Grantor agrees that the Secured Party or the Financial Institution may also enforce its rights and remedies with respect to the collateral (whether judicially or non-judicially) in any jurisdiction in which such collateral or the Tribe or the Grantor is located.

(b) Waiver of Venue. The Grantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any Action arising out of or relating to this Agreement or any other Loan Document or the transactions contemplated hereunder or thereunder in any Federal Court, New York State Court or California State Court. The Grantor irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such Action in any such court.

(c) Tribal Exhaustion/Tribal Court Actions. The Grantor hereby expressly, unconditionally and irrevocably waives, to the fullest extent it may legally and effectively do so, any right the Grantor may otherwise have to require that any Action be considered or heard in any court (other than as set forth in Section 10.2(a)), including without limitation considered or heard first in any tribal court or forum of the Tribe, now or hereafter existing, whether because of the doctrine of exhaustion of tribal remedies or as a matter of comity or abstention. Each Grantor agrees not to commence any Action in any tribal court or forum of the Tribe without the consent of the other parties to such Action.

(d) Service of Process. The Grantor hereby irrevocably consents to service of process in the manner provided for notices in this Agreement or in any other Loan Document, provided that nothing in this Agreement or any other Loan Document will affect the right of any party hereto or thereto to serve process in any other manner permitted by law. In addition to and without limiting the generality of the foregoing, the Grantor consents and agrees that, notwithstanding Tribal Court Ordinance Art. V1 Ch. 3 §1 or any other tribal law to the contrary, process against the Grantor shall also be effective if served (A) on the chairperson of the Grantor, or (B) by sending two copies of the process by registered or certified mail addressed to the “General Counsel” of the Grantor, at the address set forth on Section 10.02 of the Credit Agreement.

(e) Secured Parties/Indemnitees. The waivers and consents described in Sections 9.2, 10.1, 10.2 and 10.3 shall inure to the benefit of the Secured Party, the Financial Institution and each other person who is entitled to the benefits of this Agreement or the other the Loan Documents (including without limitation the indemnitees described herein and in the Credit Agreement). The Secured Party, the Financial Institution and such other persons shall have and be entitled to all available legal and equitable remedies, including the right to specific performance, money damages and injunctive or declaratory relief (other than, subject to the proviso to Section 10.01(a)(IV), punitive or consequential damages). The waivers of sovereign immunity and consents to jurisdiction contained in Section 10.1 and this Section 10.2 are irrevocable.

(f) California Judicial Reference. If any Action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by this Agreement or any other Loan Document, the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such Action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any party to such proceeding, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court.

(g) Miscellaneous. Notwithstanding any of the foregoing, nothing in this Agreement or in any other Loan Document will limit the ability of the Secured Party or the Financial Institution or their respective successors and assigns, to move to compel arbitration or move to stay or dismiss a lawsuit in favor of arbitration, and the Grantor’s waiver of sovereign immunity will expressly extend to such actions. The Grantor hereby agrees, consistent with Section 18 of the Authority Ordinance, that its limited waiver of sovereign immunity and other waivers described in Sections 10.1 and 10.2 are irrevocable and agrees not to revoke or further limit, in whole or in part, its limited waiver of sovereign immunity or the waivers described in these sections or in any way attempt to revoke or further limit, in whole or in part, such limited waiver of sovereign immunity. In the event that the Grantor (i) revokes, further limits or attempts to revoke or further limit the limited waiver of sovereign immunity described in Sections 10.1 and 10.2, (ii) takes any action which is inconsistent with the waivers described in Sections 10.1 and 10.2 or (iii) fails to submit to the jurisdiction of the courts as described in Sections 10.1 and 10.2, the Grantor hereby consents to the entry of appropriate injunctive relief.

### 10.3 Arbitration.

(a) Invocation of Arbitration. At the option of the Secured Party or the Financial Institution, any controversy or claim between or among the parties to this Agreement, whether arising in contract, tort or statute, including controversies and claims that arise out of or relate to this Agreement (including any renewals, extensions or modifications) or any other Loan Document shall be resolved by binding arbitration in



New York, New York. For purposes of this Section 10.3 only, the term “Secured Party” and “Financial Institution” shall also include any parent corporation, subsidiary or affiliate of the Secured Party or the Financial Institution involved in the servicing, management or administration of the collateral or any obligation described or evidenced by this Agreement. The arbitration shall be conducted in accordance with the procedural rules of the Federal Arbitration Act (Title 9, U.S. Code) and the regulations promulgated thereunder, notwithstanding any choice of law provision in this Agreement or any other Loan Document, and under the rules and procedures for the arbitration of financial services disputes of the American Arbitration Association or any successor thereof (“AAA”); provided, however, that the arbitration shall be heard and determined by a panel of three arbitrators. Any Grantee to this Agreement claiming the neglect or refusal of another party to proceed with an arbitration hereunder may make application to any court of competent jurisdiction as set forth in Section 10.2(a) for an order directing the parties to proceed with the arbitration in compliance with this Section 10.3. In the event such an action to compel arbitration is commenced in the courts of the Tribe, the court shall order the parties to arbitration in accordance with the provisions of this Section 10.3 and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator(s).

(b) Confirmation and Enforcement of Arbitration Award. The arbitrator(s) shall give effect to statutes of limitation in determining any claim. At any time within one year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to any court of competent jurisdiction as set forth in Section 10.2(a) for an order confirming the award. An arbitration award shall not be subject to review or modification by a court for any reason other than in the circumstances described in 9 U.S.C. §§ 9, 10 and 11. The judgment confirming an award shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in a court of competent jurisdiction as set forth in Section 10.2(a). When the award requires the performance of any other act than the payment of money, the court shall direct the enforcement thereof in the manner provided by law.

(c) Provisional Remedies. No provision of this Section 10.3 shall limit the right of any party to (A) exercise self-help remedies, (B) initiate judicial or non-judicial foreclosure against any Collateral, (C) exercise any judicial or power of sale rights, or (D) act in a court of competent jurisdiction as set forth in Section 10.2(a) to obtain an interim remedy, such as but not limited to, injunctive relief or writ of possession, or additional or supplemental remedies, in each case before, after, or during the pendency of any arbitration or other proceeding. The exercise of a remedy does not waive the right of the Secured Party or the Financial Institution to resort to arbitration.

10.4 IGRA Compliance. Notwithstanding any provision in this Agreement, or any other right to enforce the provisions of this Agreement, neither the Secured Party nor the Financial Institution shall engage in any of the following: planning, organizing, directing, coordinating, or controlling all or any portion of the Gaming Business (as defined in the Credit Agreement) (collectively, “Management Activities”), including, but not limited to:

- (a) the training, supervision, direction, hiring, firing, retention, compensation (including benefits) of any employee (whether or not a management employee) or contractor;
- (b) any working or employment policies or practices;
- (c) the hours or days of operation;
- (d) any accounting systems or procedures;
- (e) any advertising, promotions or other marketing activities;
- (f) the purchase, lease, or substitution of any gaming device or related equipment or software, including player tracking equipment;
- (g) the vendor, type, theme, percentage of pay-out, display or placement of any gaming device or equipment; or
- (h) budgeting, allocating, or conditioning payments of the Grantor's operating expenses;

provided, however, that upon the occurrence of a default under this Agreement or a Default or Event of Default, neither the Secured Party nor the Financial Institution will be in violation of the foregoing restriction solely because it: (i) enforces compliance with any term in this Agreement that does not require the gaming operation to be subject to any third-party decision-making as to any Management Activities; (ii) requires that all or any portion of the revenues securing the Loans be applied to satisfy valid terms of this Agreement or the Loan Documents; or (iii) otherwise forecloses on all or any portion of the collateral securing the Secured Obligations.

Notwithstanding any other possible construction of any provision(s) contained in this Agreement or in any other Loan Document, it is agreed that within the meaning of the IGRA: (a) the Loan Documents, individually and collectively, do not and shall not provide for the management of all or any part of the Gaming Business by any person other than the Grantor or the Tribe or deprive the Grantor or the Tribe of the sole proprietary interest and responsibility for the conduct of the Gaming Business; and (b) none of the Secured Party nor the Financial Institution (or any of their successors, assigns or agents) will exercise any remedy or otherwise take any action under or in connection with any Loan Document in a manner that would constitute management of all or any part of the Gaming Business or that would deprive the Grantor or the Tribe of the sole proprietary interest and responsibility for the conduct of the Gaming Business.

10.5 Section 81 Compliance. For the avoidance of any doubt, it is acknowledged that this Agreement is not intended to grant and does not grant a Lien on any real property owned by the Grantor or the Tribe or any agencies or instrumentalities of the Tribe, and no interpretation shall be given to this Agreement which would have the effect of such an encumbrance. Notwithstanding any right of the Secured Party or the Financial Institution in this Agreement, or any requirements or restrictions imposed on the Grantor in this Agreement, any

right, requirement or restriction that “encumbers Indian land” within the meaning of 25 U.S.C. § 81, shall not be effective for longer than six years, 364 days

[SIGNATURE PAGES FOLLOW]

Exhibit C to Security Agreement-12

SD\1333767.10

**TRADEMARK**  
**REEL: 005102 FRAME: 0427**

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be duly executed and delivered as of the date first written above.

[\_\_\_\_\_] ,  
as Grantor

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BANK OF AMERICA, N.A.,**  
as Collateral Agent, as Secured Party

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[\_\_\_\_\_] ,  
as Financial Institution

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1  
to Securities Account  
Control Agreement**

List of Existing Securities Accounts Subject to this Agreement:

<u>Exact Name of Account:</u>	<u>Account Number:</u>

**EXHIBIT A  
to Securities Account  
Control Agreement**

**[Letterhead of Secured Party]**

\_\_\_\_\_

[Name and Address of Financial Institution]

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Phone: [\_\_\_\_\_]

Facsimile: [\_\_\_\_\_]

Attention: [\_\_\_\_\_]

Re: Notice of Exclusive Control

Ladies and Gentlemen:

As referenced in the Securities Account Control Agreement, dated as of \_\_\_\_\_, 20\_\_, by and among \_\_\_\_\_ (the "Grantor"), you, and the undersigned, we hereby give you notice of our exercise of exclusive control over the Pledged Accounts. You are hereby instructed not to accept any direction, instructions or entitlement orders with respect to the Pledged Accounts or the financial assets or funds credited thereto from any person other than the undersigned, unless otherwise ordered by a court of competent jurisdiction or otherwise directed by us in writing.

You are instructed to deliver a copy of this notice by facsimile transmission to the Grantor.

Very truly yours,

**BANK OF AMERICA, N.A.,**  
as Collateral Agent, as Secured Party

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

cc: Grantor

**EXHIBIT B  
to Securities Account  
Control Agreement**

**PERMITTED INVESTMENTS**

[ATTACHED]

**EXHIBIT C  
to Securities Account  
Control Agreement**

**[Letterhead of Secured Party]**

\_\_\_\_\_, \_\_\_\_\_  
[Name and Address of Financial Institution]

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Phone: [\_\_\_\_\_]

Facsimile: [\_\_\_\_\_]

Attention: [\_\_\_\_\_]

Re: Termination of Securities Account Control Agreement

You are hereby notified that the Securities Account Control Agreement, dated as of \_\_\_\_\_, 20\_\_, by and among you, \_\_\_\_\_ (the "Grantor"), and the undersigned is terminated and you have no further obligations to the undersigned pursuant to such Control Agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to account number(s) \_\_\_\_\_ from the Grantor. This notice terminates any obligations you may have to the undersigned with respect to such account; however, nothing contained in this notice shall alter any obligations which you may otherwise owe to the Grantor pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to the Grantor.

Very truly yours,

**BANK OF AMERICA, N.A.,**  
as Collateral Agent, as Secured Party

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT D**  
**to Security Agreement**

**UNCERTIFICATED SECURITIES CONTROL AGREEMENT**

This Uncertificated Securities Control Agreement, dated as of \_\_\_\_\_, 20\_\_ (this “**Agreement**”), is entered into by and among \_\_\_\_\_, a \_\_\_\_\_ (the “**Pledgor**”), Bank of America, N.A., in its capacity as Administrative Agent under the Credit Agreement and Collateral Agent under the Security Agreement for the benefit of the Secured Parties (together with its successors and assigns in such capacity, the “**Collateral Agent**”) and \_\_\_\_\_, a \_\_\_\_\_ (the “**Issuer**”). Capitalized terms used but not defined herein shall have the meaning assigned thereto in the Security Agreement dated August 29, 2013 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”), among Shingle Springs Tribal Gaming Authority (the “**Borrower**”), the other Grantors party thereto, and the Collateral Agent. All references herein to the “**UCC**” shall mean the Uniform Commercial Code as in effect in the State of New York.

**Section 1. Registered Ownership of Shares.** The Issuer hereby confirms and agrees that as of the date hereof the Pledgor is the registered owner of [\_\_\_\_\_] [shares of the Issuer’s [common] stock/percent of the membership interest in the Issuer/percent of the partnership interest in the Issuer] (the “**Pledged Shares**”) and the Issuer shall not change the registered owner of the Pledged Shares without the prior written consent of the Collateral Agent.

**Section 2. Instructions.** If at any time the Issuer shall receive instructions originated by the Collateral Agent relating to the Pledged Shares, the Issuer shall comply with such instructions without further consent by the Pledgor or any other person.

**Section 3. Additional Representations and Warranties of the Issuer.** The Issuer hereby represents and warrants to the Collateral Agent:

(a) It has not entered into, and until the termination of this Agreement will not enter into, any agreement with any other person relating the Pledged Shares pursuant to which it has agreed to comply with instructions issued by such other person; and

(b) It has not entered into, and until the termination of this Agreement will not enter into, any agreement with the Pledgor or the Collateral Agent purporting to limit or condition the obligation of the Issuer to comply with instructions as set forth in Section 2 hereof.

(c) Except for the claims and interest of the Pledgor in the Pledged Shares, the Issuer does not know of any claim to, or interest in, the Pledged Shares. If any person asserts any lien, encumbrance or adverse claim (including any writ, garnishment, judgment, warrant of attachment, execution or similar process) against the Pledged Shares, the Issuer will promptly notify the Collateral Agent and the Borrower thereof.

(d) This Agreement is the valid and legally binding obligation of the Issuer.

**Section 4. CHOICE OF LAW.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND GOVERNED, BY THE LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO CONFLICT OF LAWS PROVISIONS THAT WOULD RESULT IN THE APPLICATION OF LAWS OTHER THAN THE LAW OF THE STATE OF NEW YORK) OTHER THAN ANY MANDATORY PROVISIONS OF THE UCC RELATING TO THE LAW GOVERNING PERFECTION AND THE EFFECT OF PERFECTION OF THE SECURITY INTERESTS GRANTED HEREUNDER OR RELATED HERETO.

**Section 5. Conflict with Other Agreements.** In the event of any conflict between this Agreement (or any portion thereof) and any other agreement now existing or hereafter entered into, the terms of this Agreement shall prevail. No amendment or modification of this Agreement or waiver of any right hereunder shall be binding on any party hereto unless it is in writing and is signed by all of the parties hereto.

**Section 6. Voting Rights; Distributions.** Until such time as the Collateral Agent shall otherwise instruct the Issuer in writing, the Pledgor shall have the right to vote the Pledged Shares and to receive dividends and other distributions with respect to the Pledged Shares, subject, in the case of non-cash distributions, to the provisions of the Security Agreement.

**Section 7. Successors; Assignment.** The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective corporate successors or heirs and personal representatives who obtain such rights solely by operation of law. The Collateral Agent may assign its rights hereunder only with the express written consent of the Issuer (not to be unreasonably withheld or delayed; it being understood that it shall be deemed unreasonable for the Issuer to withhold consent to the assignment of this Agreement to any replacement Collateral Agent appointed pursuant to the Credit Agreement) and by sending written notice of such assignment to the Pledgor.

**Section 8. Indemnification of Issuer.** The Pledgor and the Collateral Agent hereby agree that (a) the Issuer is released from any and all liabilities to the Pledgor and the Collateral Agent arising from the terms of this Agreement and the compliance of the Issuer with the terms hereof, except to the extent that such liabilities arise from the Issuer's negligence, and (b) the Pledgor, its successors and assigns shall at all times indemnify and save harmless the Issuer from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of the Issuer with the terms hereof, except to the extent that such arises from the Issuer's negligence, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of every nature and character arising by reason of the same, until the termination of this Agreement.

**Section 9. Notices.** Any notice, request or other communication required or permitted to be given under this Agreement shall be in writing and deemed to have been properly given when delivered in person, or when sent by telecopy or other electronic means (including email) and electronic confirmation of error free receipt is received or two days after being sent by certified or registered United States mail, return receipt requested, postage prepaid, addressed to the party at the address set forth below.

Pledgor: \_\_\_\_\_  
\_\_\_\_\_

Attention:  
Facsimile:

Collateral Agent: \_\_\_\_\_  
\_\_\_\_\_

Attention:  
Facsimile:

Issuer: \_\_\_\_\_  
\_\_\_\_\_

Attention:  
Facsimile:

Any party may change its address for notices by submitting a notice to such effect in the manner set forth above.

**Section 10. Termination.** The obligations of the Issuer to the Collateral Agent pursuant to this Agreement shall continue in effect until the security interests of the Collateral Agent in the Pledged Shares have been terminated pursuant to the terms of the Security Agreement and the Collateral Agent has notified the Issuer of such termination in writing. The Collateral Agent agrees to provide notice of termination in substantially the form of Exhibit A hereto to the Issuer upon the request of the Borrower on or after the termination of the Collateral Agent's security interest in the Pledged Shares pursuant to the terms of the Security Agreement. The termination of this Agreement shall not terminate the Pledged Shares or alter the obligations of the Issuer to the Pledgor pursuant to any other agreement with respect to the Pledged Shares.

**Section 11. Counterparts.** This Agreement may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing and delivering one or more counterparts.

**Section 12. Incorporation by Reference.** THE PROVISIONS UNDER THE HEADINGS "MANAGEMENT ACTIVITIES", "WAIVER OF SOVEREIGN IMMUNITY", "CONSENTS TO JURISDICTION; WAIVERS OF VENUE; EXHAUSTION; SERVICE OF PROCESS", "WAIVER OF JURY TRIAL", "ARBITRATION" AND "SECTION 81 COMPLIANCE" IN THE SECURITY AGREEMENT ARE INCORPORATED HEREIN BY THIS REFERENCE.

[SIGNATURE PAGE FOLLOWS]

\_\_\_\_\_,  
as Pledgor

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

**BANK OF AMERICA, N.A.,**  
as the Collateral Agent

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

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

\_\_\_\_\_,  
as Issuer

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

**[Letterhead of Collateral Agent]**

**[Date]**

**[Name and Address of Issuer]**

Attention: \_\_\_\_\_

Re: Termination of Control Agreement

You are hereby notified that the Uncertificated Securities Control Agreement between you, **[the Pledgor]** and the undersigned (a copy of which is attached) is terminated and you have no further obligations to the undersigned pursuant to such agreement. Notwithstanding any previous instructions to you, you are hereby instructed to accept all future directions with respect to Pledged Shares (as defined in the Uncertificated Securities Control Agreement) from **[the Pledgor]**. This notice terminates any obligations you may have to the undersigned with respect to the Pledged Shares, however nothing contained in this notice shall alter any obligations which you may otherwise owe to **[the Pledgor]** pursuant to any other agreement.

You are instructed to deliver a copy of this notice by facsimile transmission to [the Pledgor].

Very truly yours,

**BANK OF AMERICA, N.A.,**  
as the Collateral Agent

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

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