

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM429709

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	Intellectual Property Security Agreement		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Agua Caliente Band of Cahuilla Indians		05/31/2017	Federally-Recognized Indian Tribe: UNITED STATES
RECEIVING PARTY DATA			
Name:	Bank of America, N.A.		
Street Address:	300 South Fourth Street, 2nd Floor		
City:	Las Vegas		
State/Country:	NEVADA		
Postal Code:	89101		
Entity Type:	national association: UNITED STATES		
PROPERTY NUMBERS Total: 4			
Property Type	Number	Word Mark	
Registration Number:	3947992	WIN MORE PLAY LONGER	
Registration Number:	4006329	SPA RESORT CASINO DOWNTOWN PALM SPRINGS	
Registration Number:	4049429	JAVACALIENTE	
Registration Number:	4859868	ELEVATE NIGHTLIFE/POOLSIDE	
CORRESPONDENCE DATA			
Fax Number:	2138918763		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Email:	rhonda.deleon@lw.com		
Correspondent Name:	Latham & Watkins LLP		
Address Line 1:	355 South Grand Avenue		
Address Line 4:	Los Angeles, CALIFORNIA 90071-1560		
ATTORNEY DOCKET NUMBER:	042541-0062		
NAME OF SUBMITTER:	Rhonda DeLeon		
SIGNATURE:	/Rhonda DeLeon/		
DATE SIGNED:	06/01/2017		
Total Attachments: 11			
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This INTELLECTUAL PROPERTY SECURITY AGREEMENT, dated as of May 31, 2017 (this “**Agreement**”), made by the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian Tribe (the “**Borrower**” or “**Grantor**”), in favor of Bank of America, N.A. (together with its successors and assigns, the “**Bank**”).

Reference is made to the Security Agreement, dated as of May 31, 2017 (as amended, amended and restated, supplemented or otherwise modified from time to time, the, the “**Security Agreement**”), between the Borrower and the Bank. The parties hereto agree as follows:

SECTION 1. *Terms.* All capitalized terms used in this Agreement and not otherwise defined herein have the meanings specified in the Security Agreement.

SECTION 2. *Grant of Security Interest.* As security for 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 United States Bankruptcy Code), of all Secured Obligations, the Grantor pursuant to the Security Agreement did, and hereby does, assign as security to the Bank, and hereby grants to the Bank a security interest in and continuing lien on, all of the Grantor’s right, title and interest in, to and under any and all of the following assets and properties now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest (collectively, the “**IP Collateral**”):

(i) all Patents constituting Collateral, including those listed on Schedule I.

(ii) all Copyrights constituting Collateral, including those listed on Schedule II.

(iii) all Trademarks constituting Collateral, including those listed on Schedule III;

provided, however, that the foregoing pledge, assignment and grant of security interest will not cover any pending United States “intent-to-use” trademark applications for which a verified statement of use or an amendment to allege use has not been filed with and accepted by the United States Patent and Trademark Office.

SECTION 3. *Security Agreement.* The security interests granted to the Bank herein are granted in furtherance, and not in limitation of, the security interests granted to the Bank pursuant to the Security Agreement. The Grantor hereby acknowledges and affirms that the rights and remedies of the Bank with respect to the IP Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein. In the event of any conflict between the terms of this Agreement and the Security Agreement, the terms of the Security Agreement shall govern and prevail.

SECTION 4. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which when taken together shall constitute but one contract. Delivery of an executed counterpart to this

Agreement by facsimile or other electronic transmission shall be as effective as delivery of a manually signed original.

SECTION 5. *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

SECTION 6. *Irrevocable Limited Waiver of Sovereign Immunity.*

(a) The Grantor unconditionally and irrevocably waives its sovereign immunity from any suit, action, proceeding or legal process of any nature (and any and all defenses based thereon) with respect to any claim, demand, dispute, action or cause of action related or incidental to this Agreement, whether now existing or hereafter arising and whether sounding in tort, contract or otherwise, including any claims arising under the laws of the Borrower, or the Indian Civil Rights Act, 25 U.S.C. § 1301 et seq. or any successor statute (collectively "Permitted Claims"). Without limiting the foregoing, such limited waiver extends to (i) permit the interpretation, enforcement and the seeking of legal or equitable relief and remedies (whether through an award or granting of specific performance, injunction, mandamus, damages or otherwise) through judicial proceedings and other legal process as hereinafter provided, and (ii) to permit judicial actions in any of the Applicable Courts (as to compel, enter judgment upon, enforce, modify or vacate any award or interim injunctive relief related to any arbitration as described below; provided however, such waiver shall be subject to the following limitations: (w) no person will be entitled to enforce or benefit from such waiver except the Bank or any other person who is expressly by the terms hereof entitled to the benefits of the Loan Documents, together with the respective successors and assigns of such persons (each, a "Permitted Party"); (x) no person shall be entitled to assert a claim because of such waiver except a Permitted Party as to a Permitted Claim; (y) claims permitted by such waiver may be brought only in the Applicable Courts or in arbitration proceedings as described below; and (z) all Permitted Claims shall be interpreted and subject to the law governing this Agreement. The Grantor hereby irrevocably and unconditionally (i) consents to, and submits itself and its property to the jurisdiction of the United States District Court, Southern District of New York, and any appellate court to which any appeals therefrom are available, and the courts of the State of New York, sitting in New York City, Borough of Manhattan and any appellate court to which any appeals therefrom are available (such courts, collectively, the "Applicable Courts"), (ii) agrees that all Permitted Claims brought by a Permitted Party shall be heard and determined in the Applicable Courts and (iii) agrees to be bound by the decisions of any Applicable Court. Notwithstanding the foregoing, the Grantor hereby agrees that any final non-appealable judgment, arbitration award or non-appealable 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 or judicial forums of the Grantor.

(b) The Grantor hereby unconditionally and irrevocably waives (i) the jurisdiction and right of any tribal court or forum, now or hereafter existing or created, to hear or resolve any Permitted Claim brought by a Permitted Party and (ii) the application of any rule or doctrine relating to the exhaustion of tribal remedies, abstention or comity that might otherwise require or permit a Permitted Claim brought

by a Permitted Party to be heard or resolved (either initially or finally) in a tribal court or other tribal forum.

(c) The Grantor hereby consents to the service of any process, summons, notice or document as herein provided with respect to any action or claim subject to a waiver of sovereign immunity by this Section 6. The Grantor 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 thereto to serve process in any other manner permitted by law. Without limiting the foregoing, the Grantor hereby designates, appoints, authorizes and empowers CT Corporation Systems (the "Process Agent") with an office at 111 8th Avenue, New York, New York 10011, as its designee, appointee and agent to receive for and on its behalf, and in respect of its property, service of any and all process, summons, notices and documents which may be served with respect to any action or claim subject to a waiver of sovereign immunity by this Section 6.

(d) The Grantor irrevocably consents to arbitration as described below and for the resolution and enforcement of Permitted Claims brought by a Permitted Party and actions permitted by the waivers described above, to the Applicable Courts.

(e) At the election of the Bank, any Permitted Claims brought by a Permitted Party must be resolved by binding arbitration under the commercial arbitration rules of the Judicial Arbitration and Mediation Service ("JAMS"), as modified by this Agreement. An arbitration proceeding may be commenced only by a Permitted Party upon the filing with JAMS of a Statement of Claim (within the meaning of JAMS rules) and serving a copy thereof on the Grantor. A single arbitrator shall hear the Permitted Claim, and shall be selected in accordance with the rules of JAMS. No person shall be eligible to serve as an arbitrator if the person is related to, affiliated with or has represented in a legal capacity any party to the arbitration proceeding or any party to a Loan Document. The arbitrator shall be an attorney, who is experienced in advising clients in connection with commercial borrowings or the issuance of debt securities. Any party shall be permitted to engage in any discovery permitted under the rules of JAMS. However, all discovery shall be completed within 90 days following the initial filing of the Statement of Claim. Any dispute concerning this arbitration provision or whether a claim is arbitrable shall be determined by the arbitrator. The arbitrator shall have the power to award legal fees pursuant to the terms of this Agreement and the other Loan Documents.

(f) The hearing on the arbitration must be held in the City of Los Angeles, California, and commence and be completed no more than 30 days after the close of discovery, and the arbitrator shall render a reasoned award in writing within 30 days of the completion of the hearing, which shall contain findings of facts and conclusions of law. Any arbitrator appointed hereunder may award interim injunctive relief before the final arbitration award. Any controversy concerning whether an issue is arbitrable shall be determined by the arbitrator.

(g) The Grantor shall comply with and observe each order, award, judgment or decree entered by any Applicable Court with respect to any Permitted Claim (collectively, "Orders"). To that end, the Grantor and any court of the Grantor of competent jurisdiction now or hereafter existing shall give full faith and credit to all Orders and, to the extent reasonably necessary, shall issue such additional orders

and take such additional actions and exercise such additional legal powers as may reasonably be necessary to effectuate the same, whether within or without the Grantor's lands and within its jurisdiction. In addition, to the extent applicable, any arbitration award arising from arbitration authorized hereunder shall be effectuated in accordance with the terms granting such arbitration rights and in accordance with the Arbitration Provisions, and shall be deemed to be an Order. The Grantor's police powers shall be available to secure and support any such enforcement efforts, and all police or other law enforcement officials of the Grantor shall carry out such Orders. All enforcement remedies with respect to any Order generally available throughout the State of California may be applied on the reservation of the Grantor, including lands owned in fee by or held by or in trust for the Grantor.

(h) Except as specifically so provided, the Grantor expressly preserves its defense of sovereign immunity and does not waive, limit or modify such sovereign immunity from uncontested suits or arbitration proceedings.

(i) The waivers and consents in this Section 6 shall inure to the benefit of the Bank and each other Permitted Party. With respect to such waivers and consents, the Bank and each other Permitted Party 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 (including to prevent or mitigate the effect of any Impairment Default or potential Impairment Default); provided that recourse for monetary damages or relief shall be enforceable only as against Gaming Assets (except as otherwise provided in this Section 6). The waiver of sovereign immunity and consent to jurisdiction contained in this Section 6 are irrevocable.

(j) By agreeing to binding arbitration, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of any Permitted Claim. Furthermore, without intending in any way to limit the agreement to arbitrate in this Section 6, to the extent any Permitted Claim is not arbitrated, the parties irrevocably and voluntarily waive any right they may have to a trial by jury in respect of such Permitted Claim. **WHETHER THE CLAIM IS DECIDED BY ARBITRATION OR BY TRIAL BY A JUDGE, THE PARTIES AGREE AND UNDERSTAND THAT THE EFFECT OF THIS AGREEMENT IS THAT THEY ARE GIVING UP THE RIGHT TO TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW.**

Notwithstanding anything in this Agreement or any other Loan Document, in any action or proceeding against the Borrower or any other Tribal Entity to enforce this Agreement or any other Loan Document, each of the Borrower and the Bank agree that the Bank shall not have recourse against any assets of the Grantor or any other Tribal Entity except the Gaming Assets; provided, that if an Impairment Default has occurred and is continuing, the Bank shall have recourse against all assets of the Borrower and the other Tribal Entities to the extent of an amount equal to the amount of any Distribution made in contravention of this Agreement (including for this purpose, any amount that is required to be contributed back to the Gaming Enterprise pursuant to the proviso to Section 8.6 of the Loan Agreement), and not transferred back to the Gaming Enterprise within fifteen (15) days following the occurrence of such Impairment Default (or, in the case of an Impairment Default under Section 8.6, five (5) Business Days); provided, further, that in no event shall the Bank have recourse to any Protected Assets.

NOTWITHSTANDING ANY OTHER POSSIBLE CONSTRUCTION OF ANY PROVISION HEREIN, THE BANK AGREES THAT THIS AGREEMENT DOES NOT CREATE (A) ANY RIGHTS ON THE PART OF THE BANK TO MANAGE THE GAMING ENTERPRISE, (B) ANY RIGHTS ON THE PART OF THE BANK TO INTERFERE WITH THE GRANTOR'S AND/OR THE GAMING COMMISSION'S RIGHT TO DETERMINE STANDARDS OF OPERATION AND EFFICIENT MANAGEMENT OF THE GAMING ENTERPRISE (INCLUDING, BUT NOT LIMITED TO, OPERATING BUDGETING MATTERS AND POLICIES RELATING TO GAMING AND CASINO SERVICES) OR ANY RIGHTS TO HAVE ACCESS TO THE SECURED AREAS IN THE CASINOS UNLESS DULY LICENSED, OR ANY RIGHT ON THE PART OF THE BANK TO BE LICENSED, OR (C) ANY LIEN AGAINST ANY REAL PROPERTY INTERESTS OF THE GRANTOR (INCLUDING BUT NOT LIMITED TO TRUST LANDS OF THE AGUA CALIENTE INDIAN RESERVATION) OR ANY IMPROVEMENTS OR FIXTURES TO ANY SUCH REAL PROPERTY, OR ANY INTEREST THEREIN, WHETHER TANGIBLE OR INTANGIBLE, LEGAL OR BENEFICIAL, VESTED OR CONTINGENT, OR ANY OCCUPANCY OR OTHER RIGHTS OR ENTITLEMENTS THEREIN OR RELATED THERETO.

SECTION 7. *Management Activities.*

Notwithstanding any provision in this Agreement or any other Loan Document or any other right to enforce the provisions of this Agreement or any other Loan Document, neither the Bank nor any other Permitted Party, nor any other person or entity acting under the direction or control of the Bank or any other Permitted Party, shall engage in any of the following: managing, planning, organizing, directing, coordinating, or controlling all or any portion of the Borrower's gaming operations (collectively, "**Management Activities**"), including, but not limited to, those related to the following:

- (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 or Event of Default, neither the Bank nor any other Permitted Party will be in violation of the foregoing restriction solely because it: (i) enforces compliance with any term in this Agreement or any other 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 of the Borrower's gaming operations be applied to satisfy valid terms of this Agreement or any other Loan Document; or (iii) otherwise forecloses on all or any portion of the IP Collateral.

SECTION 7. *Section 81 Compliance.* For the avoidance of any doubt, it is acknowledged that none of the Loan Documents is intended to "encumber Indian Land" within the meaning of 25 U.S.C. § 81, and no interpretation shall be given to any Loan Document which would have the effect of such an encumbrance. Notwithstanding any right of the Bank, or any requirements or restrictions imposed on the Grantor in this Agreement or any other 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.

[Signature Pages Follow]

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

AGUA CALIENTE BAND OF CAHUILLA INDIANS,
as the Borrower and the Grantor

By: 
Name: ~~Jeff L. Grubbe~~
Title: Chairman

BANK OF AMERICA, N.A.,
as Bank

By: Michele Gordon
Name: Michele Gordon
Title: SVP

[Signature Page to IP Security Agreement]

TRADEMARK
REEL: 006075 FRAME: 0289

Schedule I
to Intellectual Property Security Agreement

Patents Owned by the Agua Caliente Band of Cahuilla Indians
U.S. Patent Registrations

None.

U.S. Published Patent Applications

None.

Schedule II
to Intellectual Property Security Agreement

Copyrights Owned by the Agua Caliente Band of Cahuilla Indians
U.S. Copyright Registrations

None.

U.S. Copyright Applications

None.

Schedule III
to Intellectual Property Security Agreement

Trademarks Owned by the Agua Caliente Band of Cahuilla Indians
U.S. Trademark Registrations

<u>Title</u>	<u>Registration No.</u>	<u>Expiration Date</u>
WIN MORE, PLAY LONGER	3947992	04/19/2021
SPA RESORT CASINO Downtown Palm Springs	4006329	08/02/2021
JAVACALIENTE	4049429	11/01/2021
ELEVATE NIGHTLIFE/POOLSIDE	4859868	11/24/2025

U.S. Published Trademark Applications

<u>Title</u>	<u>Serial No.</u>	<u>Filing Date</u>
Agua Caliente Casino Resorts (Vertical Mark)	86851274	12/16/2015
Agua Caliente Casino Resorts (Horizontal Mark)	86851308	12/16/2015
Agua Caliente Casino Resorts (Linear Mark)	86851335	12/16/2015