

FACILITIES
MANAGEMENT AGREEMENT
FOR THE ATLANTIC CITY CONVENTION CENTER
AND JIM WHELAN BOARDWALK HALL
BETWEEN
CASINO REINVESTMENT DEVELOPMENT AUTHORITY
AND
[INSERT LEGAL NAME OF SUCCESSFUL RESPONDENT]

Dated as of
January 1, 2019

**FACILITIES MANAGEMENT AGREEMENT
ATLANTIC CITY CONVENTION CENTER AND JIM WHELAN BOARDWALK
HALL**

_____ (hereinafter referred to as the “Manager”)

THIS FACILITIES MANAGEMENT AGREEMENT (the “Agreement”) is made as of the 1st day of January, 2019 (the “Effective Date”) by and among the CASINO REINVESTMENT DEVELOPMENT AUTHORITY, a public body established in, but not of, the Department of the Treasury of the State of New Jersey, and existing under and by virtue of the laws of the State of New Jersey, including P.L. 1984, c. 218, as amended and supplemented from time to time (the “**Authority**”) and the Manager identified herein-above.

RECITALS

WHEREAS, the Authority is (a) the owner of the Atlantic City Convention Center (the “ACCC”) and the West Hall (“West Hall”) portion of Boardwalk Hall and (b) the managing member of Historic Boardwalk Hall, LLC, a New Jersey limited liability company (“HBH”) which is the lessee of the East Hall (“East Hall”) portion of Boardwalk Hall; and

WHEREAS, in accordance with P.L. 2011, c.18, on April 1, 2013, the Atlantic City Convention and Visitors Authority (“ACCVA”) was consolidated into the Authority such that the ACCVA ceased to be a separate entity and all rights, duties and functions of the ACCVA became rights, duties and functions of the Authority; and

WHEREAS, the Authority, as successor to the ACCVA, is the current operator and manager of the ACCC, East Hall and West Hall, the parking garage located adjacent to Boardwalk Hall, and the Rail Terminal located at the foot of the Atlantic City Expressway, all located in Atlantic City, New Jersey, with the East Hall, West Hall, parking garage, Rail Terminal and such other mutually agreed upon locations collectively referred to as “Boardwalk Hall” and the ACCC and Boardwalk Hall collectively referred to as the “Facilities”; and

WHEREAS, in September of 2018, the Authority issued a Request for Proposal for the provision of management services at the Facilities (the “RFP”); and

WHEREAS, the Manager is in the business of managing and operating facilities, such as the Facilities, and acknowledges that it is familiar with the statutory and contractual oversight regarding the Facilities; and

WHEREAS, the Authority desires to engage the Manager to manage and operate the Facilities, and the Manager desires to accept such engagement, and, pursuant to Resolution ___-___, adopted _____, the Authority awarded to the Manager the contract for the provision of such services subject to the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements herein contained, the parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Definitions.

For purposes of this Agreement, the following terms have the meanings referred to in this Section:

“ACCC” shall have the meaning as set forth in the Recital hereto.

“ACCVA” shall have the meaning as set forth in the Recitals hereto.

“Affiliate” shall mean a person or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person or entity. For purposes of this definition, “control” means ownership of equity securities or other ownership interests which represent more than 50% of the voting power in the controlled person.

“Approved Budgets” shall mean any budgets submitted by the Manager as approved by the Authority pursuant to Section 5.3 hereof.

“Authority” shall have the meaning as set forth in the Recitals hereto.

“Base Fee” shall have the meaning as set forth in Section 4.1 hereof.

“Bond Resolution” shall mean (i) the NJSEA Bond Resolution, and (ii) any future bond resolution, trust indenture or similar document to which Luxury Tax Bonds are issued by the Authority.

“Authority’s Executive Director” shall mean the senior administrative official of the Authority, as from time to time appointed by the Authority, or such person as may from time to time be authorized in writing by such administrative official to act for him/her with respect to any and all matters pertaining to this Agreement.

“Capital Equipment” shall mean any and all furniture, fixtures, machinery or equipment to be used for the operation of any of the Facilities, either additional or replacement, having an expected useful life of more than five years.

“Capital Improvements” shall mean any and all building additions, alterations, renovations, repairs or improvements.

“Cash Flow Shortfall” shall have the meaning as set forth in Section 5.1 hereof.

“Code” shall mean the Internal Revenue Code of 1986, as amended and supplemented, or any applicable successor federal tax law.

“Concessions Agreement” shall mean the Food Beverage and Merchandise Concessions and Catering Agreement entered into by and between the Authority and the Concessionaire.

“Concessionaire” shall mean the successful respondent to the Authority’s solicitation for the Food Beverage and Merchandise Concessions and Catering services.

“Contract Administrator” shall mean the person designated by each of the Manager and Authority to have day to day responsibilities for the administration of this Agreement and whom shall be designated in writing to the other party.

“Event Expenses” shall mean any and all expenses incurred or payments made by the Manager in connection with the occurrence of events at the Facilities, including, but not limited to costs for event staffing, including ushers, ticket takers, security and other event staff and costs relating to setup and cleanup.

“Facilities” shall mean the buildings, improvements and adjacent walkways along the perimeter of the ACCC, Boardwalk Hall, including all interior and exterior systems and structures appurtenant thereto, and the Rail Terminal.

“Fiscal Year” shall mean a one year period beginning January 1 and ending December 31.

“HBH” shall have the meaning set forth in the Recitals hereto.

“Incentive Fee” shall have the meaning as set forth in Section 4.2 hereof.

“Initial Term” shall mean the period commencing as of the Effective Date and ending at midnight on December 31, 2023.

“Law(s)” is defined in Section 11.2 hereof.

“Luxury Tax Bonds” shall mean (i) the Authority’s outstanding Convention Luxury Tax Revenue Bonds, Series 2014, and (ii) any bonds, notes or other obligations that may be issued or incurred by the Authority in the future that are payable from Luxury Tax Revenues.

“Luxury Tax Revenues” shall mean receipts from the luxury tax levied and collected in Atlantic City pursuant to P.L. 1947, c.61, as amended.

“Net Luxury Tax Revenues” shall mean Luxury Tax Revenues that are available to be applied to pay Operating Expenses under and pursuant to the Bond Resolution, subject and subordinate to the payment or provision for payment of debt service on the Luxury Tax Bonds and the funding of any required reserves thereunder.

“Net Operating Loss” shall mean with respect to a Fiscal Year, the excess, if any, of Operating Expenses for such Fiscal Year over Operating Revenues for such Fiscal Year.

“NJSEA” shall mean the New Jersey Sports and Exposition Authority.

“Operating Expenses” shall mean any and all expenses and expenditures of whatever kind or nature incurred directly by the Manager in promoting, marketing, operating, maintaining, and managing the Facilities, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis, including but not limited to the following:

(i) employee payroll, benefits, reasonable relocation costs, bonus and related costs, (ii) cost of operating supplies, including general office supplies, (iii) advertising, marketing, group sales, and public relations costs, (iv) cleaning expenses, (v) data processing costs, (vi) dues, subscriptions and membership costs, (vii) the Base Fee, (viii) printing and stationary costs, (ix) postage and freight costs, (x) equipment rental costs, (xi) minor repairs, maintenance, and equipment servicing, (xii) security expenses, (xiii) telephone and communication charges, (xiv) travel and entertainment expenses of the Manager employees, in accordance with the Manager’s T&E Policy (a copy of which shall be provided to Authority prior to the execution of this Agreement), (xv) cost of employee uniforms and identification, (xvi) exterminator, snow and trash removal costs, if applicable (xvii) computer, software, hardware and training costs, (xviii) parking expenses, (xix) utility expenses, (xx) office expenses, (xxi)) audit and accounting fees, (xxii) external counsel legal fees, provided the Manager utilizes Authority-approved legal counsel and subject to review and approval of the Authority’s General Counsel, (xxiii) all bond and insurance costs, including but not limited to personal property, liability, and worker’s compensation insurance, (xxiv) commissions and all other fees payable to third parties (*e.g.* commissions relating to food, beverage and merchandise concessions services and commercial rights sales), (xxv) cost of complying with any Laws, (xxvi) in an absence of a final, unappealable judicial determination of negligence by the Manager, the costs incurred by the Manager to settle or defend any claims asserted against the Manager and/or Authority arising out of its operations at the Facility on behalf of Authority; (xxvii) costs incurred under service contracts and other agreements relating to Facility operations, (xxviii) taxes, and (xxix) the cost of obtaining and maintaining the performance bond required hereunder; provided that Operating Expenses *shall not include* (A) expenses or expenditures in connection with Capital Improvements and Capital Equipment purchases, (B) any expenses relating to the Manager personnel based in the Manager’s corporate headquarters locations other than Atlantic City, New Jersey (other than the reasonable costs of travel by such personnel in connection with the Manager’s management of the Facilities, which costs shall be Operating Expenses), and (C) the cost and expenses incurred by the Concessionaire under the Concessions Agreement. Solely for purposes of calculating Net Operating Loss and identifying Operating Expenses which will be budgeted in Approved Budgets, Operating Expenses shall exclude all extraordinary expenses which are mutually agreed upon by the parties, all interest expenses, income, excise or franchise taxes related to the Facilities, and debt service, depreciation and amortization expenses related to the Facilities. In addition, for purposes of calculating the Net Operating Loss, Operating Expenses shall not include the Incentive Fees payable pursuant to Section 4.2 below.

“Operating Revenues” shall mean: (a) any and all revenues of every kind or nature derived from operating, managing or promoting the Facilities, including, but not limited to: revenues derived from the sale of commercial, naming and /or sponsorship rights, license, lease, rental, food service and concession and catering revenues (however, if such revenues are collected in the first instance by and retained by the Concessionaire, the amount of such revenues paid by the Concessionaire to the Facilities shall be included as Operating Revenues), revenues from merchandise sales, advertising sales, equipment rentals, utility revenues, box office revenues, facility fees, parking revenues, commissions or other revenues from decoration and set-up and security subcontractors (however, if such revenues are collected by the subcontractor, the amount of such revenues paid by the subcontractor to the Facilities shall be included as Operating Revenues), miscellaneous operating

revenues, and interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual basis. Luxury Tax Revenues and other statutorily mandated revenues and any revenue from the sale or lease of furniture, fixtures and/or equipment and sales or leases of the property not in the ordinary course of business are not considered Operating Revenues. The parties acknowledge that revenues from the sale of tickets and similar event revenues for events at the Facilities are not Operating Revenues, but are instead revenues of the promoter and/or performer of each event (except to the extent the Facilities are entitled to such revenues under the applicable event license agreement). To the extent that the Manager collects such ticket sales and similar event revenues on behalf of performers and promoters, the ticket sale and similar event revenues will be the source of funds from which the Manager collects the rental charges and other event payments and reimbursement due by such promoter and/or performer for use of the Facilities, which charges and reimbursements are Operating Revenues hereunder.

“Pre-existing Agreements” shall mean each contract, license, agreement, option, lease and commitment existing as of the date of the Effective Date that grants any person or entity any right (i) to license, use or rent of or any portion of the Facilities, or (ii) to provide services to be used in the management, operation, use, possession, occupation, maintenance, promotion or marketing of all or any portion of the Facilities.

“Procurement of Goods and Services Protocol” or “Procurement Protocol” shall mean the protocol promulgated by the Authority dated December 19, 2014, as amended, that establishes and governs the standard operating procedures for the Manager’s procurement of goods and services for the Facilities, such protocol subject to amendment by the Authority from time to time, upon reasonable notice to the Manager. The Procurement Protocol augments the terms and conditions of this Agreement, and supersedes any conflicting terms and conditions herein.

“Rail Terminal” shall mean the rail terminal operation (excluding, however, the trackage improvements, the road bed, related signaling, all other operations directly involving the movement of trains and the offices of Amtrak and NJ Transit thereat) located adjacent to the land on which the ACCC is located and the parking facilities related to the rail terminal, pursuant to which the Authority manages such operations.

“Renewal Term” shall have the meaning as set forth in Section 3.2 of this Agreement.

“Rev. Proc. 2017-13” shall mean Revenue procedure 2017-13 (as amended, supplemented or superseded).

“RFP” shall have the meaning set forth in the Recitals hereto.

“Manager Capital Contribution” shall mean the amount, if any, contributed by the Manager to the Facilities under the terms and conditions of this Agreement, as provided in Section 5.10(a) hereof.

“Manager Event Marketing Fund Contribution” shall mean the amount, if any, contributed by the Manager to the Facilities under the terms and conditions of this Agreement, as provided in Section 5.10(c) hereof.

“Tax-Exempt Bonds” shall mean bonds issued by Authority or any other governmental entity to finance any of the Facilities the interest on which is excludable from gross income pursuant to Section 103 of the Code.

“Term” shall mean the Initial Term and any Renewal Term.

Section 2. Engagement of the Manager; Scope of Services.

2.1 Engagement.

(a) General. The Authority hereby engages the Manager to manage, promote, operate, market, and maintain the Facilities during the Term and each Renewal Term, if any, upon the terms and conditions hereinafter set forth, and the Manager hereby accepts such engagement. Notwithstanding the foregoing or anything else in this Agreement to the contrary, the Manager’s obligations with respect to the Rail Terminal shall be limited to those described in Section 2.6 below.

(b) Managing Agent for the Facilities. (i) Subject to the terms of this Agreement, the Manager shall be the sole and exclusive managing agent of the Authority to manage, operate and maintain the Facilities during the Initial Term and the Renewal Term, if any. In addition, the Manager shall also provide promotional, sales and marketing services for the Facilities as set forth herein during the Initial Term, and the Renewal Term, if any on a non-exclusive basis in collaboration with other organization(s) engaged by the Authority. The cost of engaging such entity(ies) shall be the responsibility of Authority, and shall not be deemed an Operating Expense hereunder. The Manager shall maintain a master set of booking records and schedules for the Facilities. All performance based metrics established by Authority with respect to the marketing and sales of the Facilities shall be mutually agreed upon by the Manager.

(ii) the Manager shall have exclusive authority over the day-to-day operation of the Facilities and all activities therein shall be subject to the review and approval of the Authority as noted herein; provided that the Manager shall follow all policies, guidelines and regulations of the Authority currently in effect and hereafter established from time to time by the Authority that the Authority shall notify the Manager in writing are applicable to the Facilities (including, for example, the Procurement Protocol) or that are adopted by the Authority pursuant to the New Jersey Administrative Procedures Act.

2.2 Scope of Services; Generally. the Manager shall perform and furnish such services and provide such systems, including information and data communications systems, as are appropriate or necessary to manage promote, operate and maintain the Facilities in a first-class manner consistent with the Manager’s policies and procedures and the operations of other similar first-class facilities and such policies, guidelines and regulations of the Authority as may be established from time to time, provided that the Manager receives a copy of such policies, guidelines and regulations in advance of their effective date.

2.3 Specific Services. Without limiting the generality of the foregoing, with respect to the Facilities, the Manager shall have, without (except as otherwise expressly noted below) any prior approval by the Authority, the sole right, authority and obligation to:

(a) employ, train, supervise and direct employees and personnel consistent with the provisions of this Agreement;

(b) administer relationships with all subcontractors, concessionaires and all other contracting parties to the Pre-existing Agreements, assume responsibility for any and all negotiations, renewals, and extensions (to the extent the Manager deems any of the foregoing to be necessary or desirable) relating to such Pre-Existing Agreements, and enforce the Pre-Existing Agreements. The parties hereto acknowledge that the Authority provided, or caused its predecessor facilities manager to provide, copies of all Pre-Existing Agreements to the Manager within sixty (60) days of execution of this Agreement. The Manager shall not be liable for failing to administer, perform or enforce any Pre-existing Agreement to the extent a copy thereof has not been provided to the Manager;

(c) negotiate and execute in its name as agent for the Authority, deliver and administer any and all licenses, occupancy agreements, rental agreements, advertising agreements, ticketing services agreements, concession agreements (except for food, beverage and merchandise concessions and catering separately approved by the Authority), supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating and set up, snow removal, general maintenance and maintenance and inspection of HVAC systems, elevators, stage equipment, emergency services, fire control panel and other safety equipment, staffing and personnel needs, including guards and ushers, other services which are necessary or appropriate) and all other contracts and agreements in connection with the promotion, marketing, operation, maintenance, and management of the Facilities provided that, if any such license, agreement, commitment or contract other than those involving the license, lease or rental of the Facilities in the ordinary course (i) has a term that expires beyond the remaining Term or Renewal Term, if any or (ii) to the extent the agreement involves the license, lease or rental of the Facilities, it materially deviates from the Authority's approved form of agreement or (iii) will require aggregate expenditures on behalf of the Facilities of more than \$40,000 per Fiscal Year, such license, agreement, commitment or contract shall be approved by resolution of the Authority pursuant to the Procurement Protocol. In addition to those contracts requiring Authority's prior approval as described above, for purposes of Authority ensuring compliance with Section 141 of the Code and the applicable Treasury Regulations, the Manager shall obtain the prior approval of Authority before entering into any of the following described contracts. Authority shall not grant such approval unless it shall first obtain an approving opinion of Authority's bond counsel to the effect that the execution, delivery and performance of such contract shall not adversely affect the exclusion from gross income of interest on any Tax-Exempt Bonds issued to finance such Facilities:

(i) Any contract resulting in any nongovernmental person being treated as the owner of any part of the Facilities for federal income tax purposes;

(ii) Any contract relating to any of the Facilities which grants a leasehold interest, term for years, or other interest in such Facility that is properly characterized as a lease for federal income tax purposes;

(iii) Any contract relating to any of the Facilities that conveys commercial rights for such Facilities, including without limitation the sponsorship, naming rights and advertising signage (including contracts described in Section 2.3(o) hereof);

(iv) Any management contracts with respect to any of the Facilities; or

(v) Any contract relating to any of the Facilities that conveys special legal entitlements for beneficial use of such Facilities unless such use satisfies a use exception as described in Section 1.141-3(d)(3) of the Treasury Regulations, other than arrangements (1) the term of which, including all renewal options as described above, is not longer than fifty (50) days; (2) that are negotiated at arms' length and the compensation is at fair market value; (3) and wherein the property is not financed for a principal purpose of providing such property for use by a nongovernmental person, unless such arrangement results in ownership of a Facility by a non-governmental person as set forth in Section 2.3(c)(i) above. The term limit described in the immediately preceding sentence is not required to relate to consecutive days; that is, if the contract provides for use of any of the Facilities for ten (10) days per year for six (6) years, the contract would have to comply with the Authority prior approval requirements applicable to contractual arrangements set forth in paragraph (c) above, because the term of the contract would exceed fifty (50) days;

(d) negotiate and execute as agent of the Authority, deliver and administer any and all booking commitments, provided that any such booking commitment is in compliance with the policies, guidelines and regulations of the Authority (or the Authority designee, if any for the ACCC) in regard to bookings;

(e) to the extent that Operating Revenues or funds supplied by the Authority are made available therefore, maintain the Facilities in good and clean condition consistent with other similar first-class facilities managed by the Manager, and in compliance with all applicable law, reasonable wear and tear excepted;

(f) to the extent that Operating Revenues or other funds supplied by the Authority are made available therefore, rent, lease or purchase all equipment and maintenance supplies necessary or appropriate for the operation and maintenance of the Facilities;

(g) to the extent that funds supplied by the Authority are made available pursuant to Section 5.8, implement all approved Capital Improvements and Capital Equipment purchases for the Facilities;

(h) establish and adjust prices, rates and rate schedules for the aforesaid licenses, agreements and contracts and any other commitments relating to the Facilities to be negotiated by the Manager in the course of its promotion, marketing, operation, maintenance and management of the Facilities. In determining such prices and rate schedules, the Manager shall evaluate comparable charges for similar goods and services at similar and/or competing facilities and shall consult with and obtain approval (through the budgeting process) from the Authority's Executive Director for any adjustments to the rate schedules at the Facilities to be proposed by the Manager;

(i) pay, when due, on behalf of the Authority, all Operating Expenses from accounts established pursuant to Sections 5.6 and 5.7 of this Agreement;

(j) after consultation with the Authority's General Counsel or his designee, institute as agent for the Authority and at the reasonable expense of the Authority, with counsel selected by the Authority, such legal actions or proceedings as the Manager shall deem necessary or appropriate in connection with the operation of the Facilities, including, without limitation, those actions or proceedings to collect charges, rents or other revenues due to the Authority or to cancel, terminate or

sue for damages under any license, use advertisement or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or Concessionaire at the Facilities;

(k) maintain a master set of all agreements, booking records and schedules for the Facilities, and make such records available to the Authority or its designee upon the Authority's request;

(l) provide day-to-day administrative services in support of its management activities pursuant to Approved Budgets and annual plans described herein and of its maintenance activities, including, but not limited to, the acquisition of services, equipment, supplies and facilities, internal budgeting and accounting, maintenance and property management, personnel management, record keeping, collections and billing, and similar services;

(m) [reserved];

(n) engage in such other advertising, solicitation, marketing and promotional activities as the Manager deems necessary or appropriate to develop the potential of the Facilities and the cultivation of broad community support. The Manager shall work with the Authority to market the Facilities for conventions, trade shows and public entertainment shows. In advertising or promotions relating to the Facilities, the Manager shall have a revocable, non-exclusive license to use the Authority's trade names, trade dress and logos; and

(o) market the commercial rights for the Facilities, including without limitation the sponsorship and naming rights and advertising signage. The Manager shall be required to obtain the prior written consent of the Authority prior to the sale to any entity of any sponsorship, naming and/or commercial rights of any part of the Facilities. The Manager shall provide to the Authority for its review and approval, a copy of the any agreement or amendment thereto with any entity proposed to provide such services.

2.4 Right of Entry Reserved. Representatives of the Authority designated in writing shall have the right, at appropriate times, to enter all portions of the Facilities to inspect same, to observe the performance of the Manager of its obligations under this Agreement, to install, remove, adjust, repair, replace or otherwise handle any equipment, utility lines, or other matters in, on, or about the Facilities, or to do any act or thing which the Authority may be obligated or have the right to do under this Agreement or otherwise. Nothing contained in this Section is intended or shall be construed to limit any other rights of the Authority under this Agreement. The Authority shall not interfere with the activities of the Manager hereunder, and the Authority's actions shall be conducted such that disruption of the Manager's work shall be kept to a minimum. Nothing in this Section 2.4 shall impose or be construed to impose upon the Authority any independent obligation to construct or maintain or make repairs, replacements, alterations, additions or improvements or create any independent liability for any failure to do so.

2.5 Additional Obligations with Respect to Services. [reserved].

2.6 Services with Respect to the Rail Terminal. The Manager's services with respect to the Rail Terminal shall be limited to providing, or arranging for the provision of, heating, ventilation and air conditioning maintenance and repairs, all utilities, cleaning and janitorial services and general maintenance of the Rail Terminal. In no event shall the Manager be responsible for security services at the Rail Terminal, or for the performance of any services with respect to the Rail Terminal trackage,

road beds, related signaling and all other operations directly involving the movement of trains and the offices of Amtrak and NJ Transit located at the Rail Terminal.

Section 3. Term.

3.1 Initial Term. The Initial Term is as provided in Section 1, and may be renewed or terminated pursuant to the provisions of this Agreement.

3.2 Renewal Term.

(a) At the expiration of the Initial Term herein provided, this Agreement may be renewed, at the sole option of the Authority, for up to two additional one-year periods commencing on January 1, 2024 and ending on December 31, 2024 (the “First Renewal Term”) and commencing January 1, 2025 and ending on December 31, 2025 (the “Second Renewal Term”) upon the same terms and conditions as set forth herein (collectively, the “Renewal Term”).

(b) (i) If the Authority wishes to renew this Agreement as set forth above, it shall provide written notice to the Manager of its desire to so renew no later than ninety (90) days prior to the end of the Initial Term; (ii) if Authority wishes to renew this Agreement as set forth above and propose a material modification to the terms of the Renewal Term, it shall provide written notice to the Manager no later than ninety (90) days prior to the end of the Initial Term setting forth the terms of such material modification. the Manager shall respond in writing within fifteen (15) days after receipt of such notice that (i) it is willing to accept such modified renewal terms, (ii) it does not wish to renew the Agreement, as so proposed or (iii) it proposes alternative terms which would make the renewal acceptable, provided that such additional terms would be subject to the Authority’s approval in its sole and absolute discretion.

Section 4. Manager’s Compensation.

4.1 Base Fee. As base compensation to the Manager for providing the services herein specified to the Facilities during the Term and any Renewal Term, the Authority shall pay the Manager during the Initial Term and the Renewal Term, if any, an annual base fee of [insert Base Fee] (\$[insert]) (as may be adjusted as set forth in this Section 4.1, the “Base Fee”). Commencing with the third (3rd) Fiscal Year of the Term and each Fiscal Year thereafter, each such annual base fee shall be adjusted upward on the first day of each such Fiscal Year by the percentage change in the Consumer Price Index -- All Urban Consumers (CPI-U) - U.S. City Average -- All Items, during the one year period ending in August immediately preceding such Fiscal Year, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or of any revised or successor index hereafter published by the Bureau of Labor Statistics or other agency of the United States Government succeeding to its functions, but in no event shall such increase exceed 3% per annum. The foregoing annual fixed compensation shall be payable in equal monthly installments due in advance on or before the first day of each month during such Fiscal Year, and the Manager shall be entitled to draw such amounts from the account for the Facilities described in Section 5.6.

4.2 Incentive Fees.

(a) The Incentive Fee, as proposed by the Manager in its response to the RFP, shall be earned based on components as agreed to in writing, by and between the Authority and the Manager, as set forth on Exhibit B attached hereto and made a part hereof, as amended during the Term.

(b) The allocation of the Incentive Fee components set forth in subsection (a) above shall be as agreed to in writing by and between the Authority and the Manager as set forth on Exhibit B attached hereto and made a part hereof, as amended during the Term.

(c) The Incentive Fee shall be payable to the Manager within sixty (60) days after the submission of the annual audit report prepared by the Authority's independent auditing firm and no later than one-hundred twenty (120) days after the end of the Fiscal Year. The Manager's invoice for the Incentive Fee for such Fiscal Year will be sent to the Authority in connection with the submission of such annual report.

(d) Notwithstanding the foregoing, no compensation payable to the Manager under this Agreement shall be based, in whole or in part, on a share of net profits from the operation of the Facilities.

(e) The Incentive Fee calculation set forth in subsections (a) and (b) hereinabove shall commence in Fiscal Year 2019.

Section 5. Funding; Budgets; Receipts; Capital.

5.1 Operating Funds. Subject to Section 5.2, following the approval of the annual operating budget for the Fiscal Year (including, without limitation, any annual operating budgets applicable to the first Fiscal Year during the Term hereof), Authority shall make available to the Manager all funds necessary to pay all Operating Expenses incurred or accrued in such Fiscal Year. To the extent that Operating Revenues during a calendar quarter period are insufficient, or expected to be insufficient to cover Operating Expenses plus, with respect to the first quarter of a Fiscal Year, the amount of the projected Incentive Fee payable pursuant to Sections 4.2(a) and 4.2(b) hereof for the prior Fiscal Year for such period ("Cash Flow Shortfall") the Authority shall advance funds to the Manager as follows: Thirty (30) days prior to the beginning of each calendar quarter during the Initial Term and any Renewal Term, the Manager will submit to the Authority an invoice for the projected Cash Flow Shortfall for such quarter and the Authority will transfer such funds to the Manager within five (5) days after the start of such calendar quarter. Such funds shall be deposited by the Manager in the operating or payroll account(s) established pursuant to Section 5.6 and used to pay Operating Expenses.

5.2 Non-Funding.

(a) Any failure by the Manager to perform its obligations under this Agreement shall not be a breach of or default under this Agreement if such breach or default results from the Authority's failure to appropriate sufficient funds for the management and operation of the Facilities (i) in connection with (A) the Authority's approval of the Approved Budget pursuant to Section 5.3 hereof or (B) the Authority's request for a plan for reduction of Operating Expenses pursuant to Section 5.5 hereof or (ii) (A) after the approval of, and in accordance with, the Approved Budgets or (B) after the request for, and in accordance with, the plan for reduction of Operating Expenses under Section 5.5 hereof.

(b) If in connection with Section 5.2(a)(i), the Authority appropriates funds at (or reduces appropriated funds to) a level that, in the Manager's reasonable judgment, renders the operation of the Facilities as set forth in Sections 2.2 and 2.3 hereof not feasible, or otherwise materially and

negatively impacts the Manager's ability to reduce Net Operating Loss at the Facilities, the Manager may, at its option to be exercised by written notice to the Authority within thirty (30) days of such funding appropriation or reduction, notify the Authority that such reduced funding level renders the operation of the Facilities as set forth in Sections 2.2 and 2.3 hereof not feasible or otherwise that its ability to reduce Net Operating Losses has been materially and negatively impacted, and shall either (i) continue management of the Facilities at a reduced level consistent with anticipated Operating Revenues and available funding, in which case the parties shall in good faith discuss amendments to the Incentive Fee terms, or (ii) terminate this Agreement pursuant to Section 12.2(b), with the effect set forth in Section 12.3; provided, however, that such termination shall not be effective until one hundred eighty days from the date Authority receives notice of the Manager's intent to terminate the Agreement pursuant to this Section 5(b)(ii).

(c) Following termination pursuant to Section 5.2(b)(ii), the Manager shall have the right to resume management of the Facilities for a period of time equal to the balance of the remaining Initial Term or Renewal Term, as the case may be, that existed at the time of such termination, such resumption to commence within sixty (60) days from such time as the Authority shall first restore, or notify the Manager of the anticipated restoration of appropriated funds to the levels that the Manager had proposed in the budget process, if such restoration occurs within twelve (12) months of termination pursuant to Section 5.2(b)(ii), provided that the Manager gives notice in writing to the Authority that the Manager elects to resume management as provided herein within thirty (30) days after the later of the Manager receiving notice from the Authority that such restoration has occurred or will occur. The Authority shall promptly notify the Manager, within such twelve (12) month period, of any decision by it to restore funding at the Facilities, including providing information regarding the level of funding that has been approved.

5.3 Annual Budget and Third Party Reports.

(a) As part of the annual plan described in Section 6.2 herein, on or before October 1 of each calendar year, the Manager will prepare, in a format specified by Authority, a proposed annual operating budget for the next Fiscal Year to meet the scope of services and objectives under this Agreement with respect to the Facilities.

(b) The Manager shall prepare and submit to Authority on or before October 1 of each calendar year during the term hereof a proposed monthly cash flow budget, in a format specified by the Authority, for the succeeding Fiscal Year with respect to the Facilities.

(c) The annual budgets referred to in subparagraphs (a) and (b) above shall be reviewed and are subject to approval by the Authority, such approval not to be unreasonably withheld. By December 31 of each year during the Initial Term and Renewal Term, if any, the Authority shall notify the Manager of any changes to such budgets. With such reasonable changes, if any, as are made by the Authority prior to December 31, such budgets shall be the Approved Budgets for the following Fiscal Year, provided that if such budgets are modified by the Authority in a manner which, in the Manager's reasonable judgment, (i) could materially interfere, impede or impair the ability of the Manager to promote, operate, maintain and manage the Facilities or (ii) reduce Net Operating Losses, the Manager shall continue its services as required hereunder at the Facilities subject to the provisions of Section 5.2(a) and (b) hereof.

(d) The Manager shall ensure that copies of all reports, audits and submittals required under contracts with any third party vendor or supplier to the Facilities are delivered to the Authority within five (5) business days of the Manager's receipt thereof, and no later than as outlined in Section 6.3(b) hereof.

5.4 Budget Modifications Initiated by the Manager. The Manager may submit to Authority at any time prior to the close of a Fiscal Year a supplemental or revised annual operating budget for the Facilities or monthly cash flow budget for the Facilities, for such Fiscal Year. Upon the approval of the Authority of such supplemental or revised budgets (such approval not to be unreasonably withheld), the Approved Budgets, for such Fiscal Year shall be deemed amended to incorporate such supplemental or revised budget. The Approved Budgets may only be amended as set forth in Section 5.5 below or in the two preceding sentences except that the Manager shall have the right to amend the Approved Budgets as may be necessary or appropriate as the result of the scheduling by the Manager of additional events or activities at the Facilities (and the incurrence of additional Operating Expenses arising from the scheduling of additional events or activities at the Facilities as long as prior to the scheduling of such additional events or activities, the Manager had a good faith belief that the projected Net Operating Loss for the Fiscal Year as set forth in the Approved Budgets would not be increased as a result of such additional events or activities).

5.5 Budget Modifications Initiated by the Authority. The Manager shall use all reasonable efforts to manage and operate the Facilities in accordance with the Approved Budgets. However, the Authority acknowledges that notwithstanding the Manager's experience and expertise in relation to the operation of facilities similar to the Facilities, the projections contained in each Approved Budget are subject to and may be affected by changes in financial, economic and other conditions and circumstances beyond the Manager's control, and that the Manager shall have no liability if the numbers within the Approved Budgets are not achieved. In the event that it appears reasonably likely, in any Fiscal Year during the term hereof, that the actual Net Operating Loss for such Fiscal Year at the Facilities will be larger than projected in the annual operating budget for such Fiscal Year, the Authority Executive Director may request from the Manager a plan for reduction of Operating Expenses to a level consistent with the projected Net Operating Loss amount. The Manager shall forthwith comply with any such expense reduction requested by the Authority; however, the provisions of Section 5.2(a) and (b) shall govern with respect to such continued operations.

5.6 Receipts and Disbursements. The Manager shall establish and maintain in one or more depositories designated by the Authority's Chief Financial Officer one or more operating, payroll and other bank accounts for the promotion, operation, maintenance and management of the Facilities, in the name of the Authority, with the Manager as agent and with signature authority in such employees of the Manager as the Manager shall determine. Except as provided in Section 5.7 below, all revenues collected by the Manager from the operation of the Facilities shall be deposited into such accounts and Operating Expenses to be paid from such accounts shall be paid by the Manager as agent for the Authority; provided, however, that the Manager shall obtain the prior written consent of Authority for the payment of any single Operating Expense (not including those paid to a promoter as part of an event settlement) in excess of \$40,000 and, further, that Authority shall be an additional signatory on payment of any single Operating Expense in excess of \$40,000. All revenues collected by the Manager arising from promotion, operation, maintenance and management of the Facilities, including-revenues from box office sales, Facilities or equipment rentals, utility rental agreements, food and beverage concessions, parking fees, or any other source, are the sole property of the Authority, and shall be held by the Manager in trust for the Authority for application as provided herein. Any amounts remaining in such accounts upon termination of this Agreement for any reason,

after payment of all outstanding Operating Expenses, shall be promptly paid by the Manager to the Authority.

5.7 Ticket Sales Revenues. Subject to the Authority's statutory investment restrictions (copies of which have been given to the Manager), the Manager shall establish, maintain and hold in a separate interest-bearing account in a banking institution depository in the State of New Jersey any ticket sale revenues, convenience fee charges and other ticketing fees which it received with respect to an event to be held at the Facilities pending the completion of the event. Such monies are to be held for the protection of ticket purchasers, the Authority and the Manager, and to provide a source of funds, as required for such payments to performers and promoters and for such payments of Operating Expenses in connection with the presentation of such events as may be required to be paid contemporaneously with the event. Following the satisfactory completion of the events, the Manager shall make a deposit into the operating account(s) established pursuant to Section 5.6 above and shall pay from such operating account, the event expenses and provide the Authority with a full-event settlement report. Interest which accrues on amounts deposited in the operating account(s) referred to in Section 5.6 and the ticket account referred to above shall be considered Operating Revenues. Bank service charges, if any, on such account(s) shall be considered Operating Expenses.

5.8 Capital Improvements; Capital Equipment. The obligation to pay for, and authority to perform, direct and supervise Capital Improvements and Capital Equipment purchases with respect to the Facilities shall remain with the Authority and will not be considered Operating Expenses. The annual plan submitted pursuant to Section 6.2 shall include the Manager's recommendation for Capital Improvements and Capital Equipment purchases with respect to the Facilities to be accomplished during the Fiscal Year and shall be accompanied by an estimate of the cost of all such items and projects and a request that the Authority budget funds therefore. The Authority shall retain the discretion to determine whether and to what level to fund Capital Improvements and Capital Equipment purchases to the Facilities. All such purchases shall be made in accordance with the Purchasing Protocol.

5.9 Limitation of the Manager Liability. Notwithstanding any provision herein to the contrary in this Agreement and except: (a) for (i) the Manager's obligations set forth in Sections 2.3(m), 2.5(c), and 2.5(g) hereof, (ii) its express indemnification undertakings in Section 8.1, and (iii) its expense reimbursement undertakings in Section 6.1(b); and (b) as otherwise provided in Section 5.10, hereof, the Manager shall not have any obligation to fund any cost, expense or liability with respect to the promotion, operation, maintenance or management of the Facilities.

5.10 Manager Capital Contribution

(a) If provided for in the Manager's response to the RFP, the Manager Capital Contribution to the Facilities shall be utilized by the Authority, after consultation with the Manager, for projects, improvements or marketing efforts at the Facilities intended to generate increased revenue for the Facilities. The Manager shall prepare and deliver to the Authority an annual accounting the Capital Contribution fund.

(b) The amount of the Manager Capital Contribution shall be amortized on a straight line, monthly, non-cash basis over a five (5) year period commencing on the Effective Date. In the event of the expiration or termination of this Agreement for any reason whatsoever, the Authority shall pay, or cause any successor management company to pay the Manager unconditionally and without set-off the unamortized amount of the Manager Capital Contribution existing as of such expiration or

termination. The payment of any such unamortized amounts shall be made to the Manager no later than the effective date of such expiration or termination.

(c) Marketing Fund. If provided for in the Manager's response to the RFP, the Manager Event Marketing Fund Contribution to the Facilities shall be made available by the Manager for the purposes described in this paragraph and need not be paid into an account or segregated from the Manager's general funds; however, the Manager shall separately track and account for such funds in its books and records. The Manager shall prepare and deliver to the Authority an annual accounting of the Event Marketing Fund. The Event Marketing Fund shall be used to market, promote and stimulate new bookings at the Facilities and for the promotion and marketing of such other events, and shall be in addition to any other funds expended or duties performed by the Manager pursuant to any other terms of this Agreement including, but not limited to, Section 2.3(m), 2.5(c) and 2.5(g) hereof. Prior to utilizing any of the amounts in the Event Marketing Fund, the Manager shall disclose to the Authority its intended use and such uses shall be subject to the prior written consent of the Authority. The Manager shall give due consideration to any plans or uses of the amounts in the Event Marketing Fund suggested to it by the Authority. When the Event Marketing Fund is utilized in connection with an event at the Facilities, net revenues from such event will be used to first replenish the Event Marketing Fund up to its original balance, with the remaining net event revenues deposited into the Operating Account as Operating Revenue. If there are not sufficient net revenues from such event to replenish the Event Marketing Fund up to its original balance, then net revenues from subsequent events at which the Event Marketing Fund is utilized will first be used to replenish the Event Marketing Fund to its original balance, with the remaining net revenues deposited into the Operating Account as Operating Revenue. In no event will the Event Marketing Fund balance go above the initial balance thereof as of the Effective Date and in no event shall the Manager be required to replenish the Event Marketing Fund except from the Facilities' net Operating Revenues from events for which the Event Marketing Fund was utilized. Should there be a balance in the Event Marketing Fund at the end of the Term, such balance shall belong to the Manager and shall be paid to or otherwise retained by the Manager upon the expiration or termination of this Agreement.

Section 6. Records, Audits and Reports.

6.1 Records and Audits.

(a) The Manager shall keep full and accurate accounting records relating to its activities at the Facilities in accordance with generally accepted procedures used in the industry, in accordance with good management accounting practices, and as otherwise specified by the Authority. The Manager shall maintain a system of bookkeeping adequate for and related to its operations hereunder. The Manager shall give the Authority's authorized representatives complete and full access to such books and records maintained at the Facilities during reasonable business hours and upon reasonable advance notice. The Manager shall keep and preserve all sales slips, rental agreements, purchase orders, sales books, credit card invoices, or duplicate deposit slips, and other evidence of Operating Revenues and Operating Expenses in accordance with the record retention policy set forth in the State of New Jersey State Agency General Records Retention Schedule. If the Authority desires to have any such documentation held for a period of time longer, the Authority shall notify the Manager, and at the time of the expiration of time period set forth in the State of New Jersey State Agency General Records Retention Schedule, the Manager may continue to keep and preserve such documentation for such extended period or may give such documentation to the Authority for it to keep and preserve for such extended period. In addition, (i) the Manager shall deliver to the Authority within thirty (30)

days after the end of each Fiscal Year its unaudited financial statements for the Facilities (which consists of a balance sheet, a statement of profit or loss and a statement of cash flows for the Facilities for the preceding Fiscal Year, prepared in accordance with generally accepted accounting principles), and (ii) the Manager shall cooperate with the independent certified public accountant or auditor selected by the Authority to periodically audit the financial statements for the Facilities. The annual audit shall contain an opinion expressed by the independent auditor of the accuracy of financial records kept by the Manager and of amounts due to the Authority. The annual audit shall also provide a certification of Operating Revenues and Operating Expenses as defined in this Agreement for such Fiscal Year. The costs of such audit shall be deemed Operating Expenses.

(b) The Authority shall have the right at any time, and from time to time, to cause auditors selected by the Authority or its internal auditors to audit all of the books of the Manager reasonably relating to the scope of its services of this Agreement, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes, and invoices. If any such audit demonstrates that the Operating Revenues or Operating Expenses reflected in any statements prepared by the Manager (a) are understated (in the case of Operating Expenses) or overstated (in the case of Operating Revenues) resulting in an overpayment to the Manager under this Agreement, the Manager shall reimburse to Authority the amount it was overpaid. If the amount of such understatement or overstatement (not including routine adjustments or re-characterizations of such expenses or revenues for reasons other than negligence, fraud, malfeasance or willful misconduct) was more than five percent (5%), then the Manager shall pay to the Authority the reasonable cost of such audit. The Authority's right to have such an audit made with respect to any Fiscal Year and the Manager's obligation to retain the above records shall expire three (3) years after the Manager's statement for such Fiscal Year has been delivered to the Authority.

6.2 Annual Management Plan.

(a) The Manager shall provide to Authority on or before October 1 of each year, an annual management plan with respect to the Facilities, which shall include the proposed annual operating budgets described in Section 5.3 for the next Fiscal Year. The annual management plan shall include information regarding the Manager's anticipated operations for such Fiscal Year, including planned operating maintenance activities by the Manager, requested Capital Improvements and Capital Equipment purchases and an anticipated budget therefore, anticipated events at the Facilities, anticipated advertising and promotional activities, and planned equipment, furnishings purchases, and recommendations for the reduction of the Net Operating Loss. The annual management plan shall be subject to review, revision, and approval by Authority. The Manager shall have thirty (30) days to incorporate any revisions into its plan. Upon approval by the Authority, such annual management plan shall constitute the Facilities operating program for the Manager for the following Fiscal Year.

6.3 Operating Reports

(a) By the twenty-fifth (25) day of each month, the Manager shall provide to Authority a written monthly operating report in a form approved by the Authority and similar to that used in other the Manager-managed facilities setting out the Facilities' anticipated activities for the upcoming month and reporting on the prior month's activities. The Manager will modify this written report to reflect any additional information that the Authority may request.

(b) By the twenty-fifth (25th) day following the end of each March, June, September and December, the Manager shall provide to Authority, a written quarterly operating report in a form

approved by the Authority and similar to that used in other the Manager-managed facilities setting out the Facilities' anticipated activities for the upcoming quarter and reporting on the prior quarter's year-to-date activities. The Manager will modify this written report to reflect any additional information that the Authority may request. The Manager shall also provide copies of all reports, audits and submittals required under contracts with any third party vendor or supplier to the Facilities, as set forth in Section 5.3(d).

6.4 Performance Meetings and Reports.

(a) The Contractor Administrator for each of the Manager and Authority shall meet on a regularly scheduled basis for the purposes of discussing, reviewing and reporting on all aspects with regards to the performance of the Manager's duties under this Agreement. If mutually agreed to by the other party, any party may include at such performance review meetings (in person or by telephone or teleconference), the Contract Administrator's direct supervisor or any other employee or consultant of such party that the other party may mutually agree to include.

(b) the Manager shall provide to Authority within 30 days of the end of each fiscal year during the Initial Term and any Renewal Term, a report setting forth its performance obligations, both financial and operational, under this Agreement and a detailed report as to if and whether each obligation has been achieved, underachieved or overachieved and an explanation as to each result.

Section 7. Employees.

7.1 The Manager Employees.

(a) Subject to the approval of the Authority in the Annual Plan, the Manager shall select, train and employ at the Facilities such number of employees as the Manager deems necessary or appropriate to satisfy its responsibilities hereunder; the Manager shall use its best efforts to recruit employees who will be proficient, productive, and courteous to patrons. The Manager shall have authority to hire, terminate and discipline any and all of its personnel working at the Facilities.

(b) The Manager shall assign a competent, full time General Manager for Boardwalk Hall and ACCC, who shall not have any other duties other than the day-to-day operation and management of each of these Facilities. Prior to the Manager's appointment of such General Manager(s), the Manager shall consult with and obtain approval from the Executive Director of the Authority (which approval will not be unreasonably withheld) with respect to the qualifications of the General Manager(s) proposed by the Manager.

(c) The Manager employees at the Facilities shall not for any purpose be considered to be employees of the Authority, and the Manager shall be solely responsible for their supervision, daily direction and control, compensation (and federal income tax withholding) and any employee benefits.

(d) To the extent the Manager utilizes any employees who are members of organized labor unions, the Manager shall, prior to negotiating any collective bargaining or other labor agreements, consult with the Authority as to the terms and provisions of any such labor agreements.

(e) During the Term and for a period of one (1) year after the end of the Term, neither the Authority nor any of its Affiliates shall solicit for employment, or hire, any of the Manager employees working at the Facilities in the position of General Manager, Assistant General Manager, Business

Manager, Director of Finance, Director of Sales, Director of Marketing, or Director of Operations; provided that those employees in such positions (i) who were employed by the prior manager of the Facilities immediately prior to the Effective Date, or (ii) involuntarily terminated by the Manager shall be exempt from this restriction. The Authority acknowledges that the Manager will spend a considerable amount of time identifying, hiring and training individuals to work in such positions, and that the Manager will suffer substantial damages, the exact amount of which would be difficult to quantify, if the Authority were to breach the terms of this Section by hiring, or soliciting for employment, any of such individuals. Accordingly, in the event of a breach or anticipated breach of this Section, the Manager shall be entitled (in addition to any other rights and remedies which the Manager may have at law or in equity, including money damages) to equitable relief, including an injunction to enjoin and restrain the Authority, from continuing such breach, without the necessity of posting a bond.

Section 8. Indemnification and Insurance.

8.1 Indemnification.

(a) The Manager shall indemnify, defend and hold harmless the Authority, and its Board members, officers, agents and employees upon demand from and against any and all losses, liabilities, claims, damages and expenses (including reasonable attorneys' fees) (collectively, "Losses") arising from or related to (i) the Manager's failure to comply with any and all Laws applicable to the Manager's performance of this Agreement; (ii) any unlawful acts on the part of the Manager or its officers, directors, agents or employees; (iii) the negligent acts, errors and/or omissions or the willful misconduct of the Manager or its officers, directors, agents or employees; or (iv) any other default or breach by the Manager of its obligations specified herein; provided, however, that the foregoing indemnification shall not extend to Losses to the extent such Losses arise from any default or breach by the Authority of its obligations specified herein.

(b) The Authority shall, to the extent permitted by law, defend and hold harmless the Manager, its directors, officers, agents and employees upon demand from and against any and all Losses arising from or related to (i) the Authority's failure to comply with any and all Laws applicable to the Authority's performance of the this Agreement, (ii) any unlawful acts on the part of the Authority or its Board members, officers, directors, agents or employees; (iii) the negligent acts, errors and/or omissions of the willful misconduct of the Authority or its respective officers, directors, agents, or employees; or (iv) the fact that any time prior to, as of, or after the date hereof the Facilities are not or have not been in compliance with all Laws, including, but not limited to, the Americans With Disabilities Act, (42 U.S.C. Sections 12101-12213 as amended by the Civil Rights Act of 1991 (42 U.S.C. Section 198 1(a)) (collectively the "ADA") as it now exists and as it may be amended in the future by statute or judicial interpretation, (v) the fact that prior to, as of, or after the date hereof there is any condition on, above, beneath or arising from the premises occupied by the Facilities which might, under any Law, give rise to liability which would or may require any "response," "removal" or "remedial action" (as such terms are defined under the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act), (vi) any structural defect or unsound operating condition with respect to the Facilities, or the premises occupied by the Facilities prior to, as of or after the date hereof, (vii) any obligation or liability under or in respect of any contract, agreement or other instrument executed in connection with this Agreement in good faith by the Manager and as authorized by Authority herein; (viii) any noncompliance by Authority with any Pre-existing Agreement, or (ix) any act or omission carried out

by the Manager at or pursuant to the direction or instruction of the Authority, its agents or employees (including without limitation Authority's Executive Director); provided, however, that the foregoing indemnity shall not extend to Losses to the extent such Losses arise from any default or breach by the Manager of its obligations specified herein. All amounts payable pursuant to this Section 8.1(b) shall be payable solely out of (1) Net Luxury Tax Revenues, and (2) second, to the extent there are insufficient funds under clause (1) above, then funds in the operating account as an Operating Expense (however, any such payments under clause (2) shall not count in the calculation of the Quantitative Incentive Fee under Section 4.2(b) hereof).

(c) The provisions set forth in subparagraphs (a) and (b) above shall survive termination of this Agreement; provided, however, that except for indemnification based upon Section 8.1(b) (iv), (v), (vi), (vii), (viii), or (ix) above, a claim for indemnification pursuant to Section 8.1 shall be valid only if the party entitled to such indemnification provides written notice thereof to the other party prior to six months following the date of termination of this Agreement (unless the claim for indemnification is based on a third party claim, which third party claim is not asserted until following termination of this Agreement, in which case such deadline for asserting the claim for indemnification shall not apply).

(d) The terms of all insurance policies referred to in Section 8.2 hereof, including without limitation the policies of any independent contractors (such as, the food and beverage Concessionaire retained by the Authority and emergency medical technicians who are not employed by the Manager), shall preclude subrogation claims against the Manager, the Authority, and their respective officers, employees and agents.

(e) Neither party shall be liable or responsible to the other for any consequential, indirect, incidental, punitive or special damages (including, without limitation, lost profits) whether based upon breach of contract or warranty, negligence, strict tort liability, or otherwise ("Special Damages), and each party's liability for damages or losses hereunder shall be strictly limited to direct damages that are actually incurred by the other party; provided, however, that this limitation shall not apply to claims against the Manager in those contracts or agreements referenced in Section 8.1(b)(vii) specifically including the recovery of Special Damages without the consent of the Authority's Executive Director or his designee. For the sake of clarity, this paragraph shall not limit or restrict any claim by the Manager for the management fees described herein upon a breach or default of this Agreement by the Authority.

8.2 Insurance. The Manager will be responsible for acquiring the following insurance coverages on behalf of the Manager and the Authority involving the promotion, marketing, operation, maintenance, and management of the Facilities. In addition, with respect to subparagraphs (a) and (b) below, the Authority will be responsible for maintaining such coverages on behalf of the Authority. The required insurance coverages hereunder must be placed with a company approved to do business in the State of New Jersey and must retain an AM Best rating of "A" or better. Each of the Manager and the Authority will have its respective coverages hereunder well in place no later than the date of execution and delivery of this Agreement and such coverages will remain in place for the duration of this Agreement. The following coverages are required (the cost of which shall be an Operating Expense):

(a) Primary Commercial General Liability insurance with limits of at least \$1,000,000 per occurrence for bodily injury and property damage and a \$2,000,000 general aggregate. The policy shall be written to cover the Facilities and operations and shall include personal and advertising injury,

independent contractors, contractual liability, products and completed operations. The Manager's policy shall include malpractice coverage for EMTs while working for the Manager. Additionally, such policy shall include coverage for damage to property of others while in the care, custody or control of the Manager at the Facilities, excluding the building or its normal contents. There shall be no exclusions or limitations with regard to claims by or against participants or performers.

(b) Automobile liability insurance for the operation of owned, non-owned, or hired cars with a limit of \$1,000,000 combined single limit for bodily injury and property damage. The policy shall include garage keeper's liability on an "if any" basis covering exposures associated with paid general parking and valet parking operations.

(c) Workers Compensation insurance in accordance with the Worker's Compensation Laws of the State of New Jersey, including employer's liability coverage in an amount not less than \$1,000,000 covering the Manager employees.

(d) All policies maintained by the Manager, with the exception of the Worker's Compensation policy, shall (i) have the Manager as the named insured, (ii) name the Authority as additional insureds thereunder by endorsement, and (iii) be and are considered primary to any valid and collectible insurance. The policies maintained by the Authority pursuant to subparagraphs (a) and (b) above shall have the Authority as the named insured.

(e) Blanket Crime insurance in an amount of \$500,000 covering the loss of money or securities and providing fidelity coverage applying to all employees of the Manager.

(f) The Manager and the Authority, as the case may be will furnish the other with certificates of insurance on or prior to the execution and delivery of this Agreement and each renewal thereafter. The binding of coverage should not be subject to any contingencies associated with the risk.

(g) The Manager and the Authority, as the case may be, shall not cancel any insurance policy hereunder without the prior written consent of the other.

(h) The Manager will negotiate, as part of the insurance program, the issuance of quarterly loss runs until all claims are closed regardless of policy expiration.

(i) These insurance provisions are separate and apart from any indemnification obligation and should not be interpreted as a limitation of liability, although the amount of any deductible under any policy obtained in accordance with the provisions below, shall be an Operating Expense hereunder. Each of the Manager and the Authority shall use commercially reasonable efforts to obtain insurance policies hereunder without any deductible; however, to the extent that it becomes commercially impractical for the Manager to obtain any policy with no deductible, the Manager will consult with and obtain the prior written consent of the Authority to purchase such policy with a deductible. Notwithstanding the foregoing, it is understood and agreed that as of the execution and delivery of this Agreement, the following policies may contain the following deductibles: (i) the automobile liability policy, \$1,000 deductible for each comprehensive and collision, (ii) the crime policy, \$25,000 deductible, and (iii) the employer's liability section of worker's compensation, \$1,000 deductible.

(j) The Manager and the Authority shall be obligated to notify the other of any claim that may be covered under the policies described in subparagraphs (a) and (b) within four (4) business days of the Manager's Risk Management Department or the Authority's Law Department (as the case may be) having knowledge of any such claim.

8.3 Performance Bond.

The Manager shall purchase and keep in force, a performance bond in the amount of at least One Million Dollars (\$1,000,000) for each year of the Initial Term and any Renewal Term covering the activities under this Agreement. The cost of the performance bond shall be an Operating Expense. Upon notice to the Manager, Authority reserves the right to obtain the performance bond on behalf of the Manager and any such expense incurred by the Authority in obtaining such bond shall be an Operating Expense. If an event of default with respect to the Manager occurs and the Authority suffers economic damages as a result thereof, then any incentive fee for which the Manager is due and owing in accordance with Section 4.2 is subject to set off pursuant to Section 12.3.

8.4 Property Insurance.

(a) The Authority shall maintain its current property insurance covering the Facilities and in addition agree to waive any right of subrogation against the Manager it may have whether or not such coverage is self-insured. Such property insurance policy shall contain a waiver of subrogation rights against the Manager, its partners and their respective officers, employees and agents, whether or not the Authority self-insures for such insurance coverage.

(b) Authority shall deliver certificates evidencing the existence of the insurance policies identified in Section 8.4(a) above to the Manager prior to the commencement of this Agreement.

(c) Notwithstanding the provisions of this Section 8, the parties hereto acknowledge that the above policies may contain exclusions from coverage which are reasonable and customary for policies of such type.

8.5 Certain Other Insurance.

(a) The Authority shall require the food and beverage Concessionaire selected by it to provide food and beverage service at the Facilities (i) to maintain liquor liability insurance covering its operations thereat in a combined single limit of not less than Five Million Dollars (\$5,000,000) for each occurrence and in the aggregate and (ii) to cause such Concessionaire to name the Manager and the Authority as additional insureds by endorsement under such insurance and to deliver to the Manager prior to the execution and delivery of this Agreement a certificate evidencing the existence thereof, which policy contains the same type of endorsements and provisions as provided in Section 8.2.

(b) If the EMT servicing the Facilities are independent contractors (i.e., not employed by the Manager as employees), the Manager shall have the right to require such contractors (i) to maintain malpractice insurance covering their services in a combined single limit of not less than One Million Dollars (\$1,000,000) for each occurrence and in the aggregate and (ii) to name the Manager and the Authority as additional insureds by endorsement under such insurance and to deliver to the Manager prior to the performance of their services at the Facilities a copy of such policy, plus a

certificate evidencing the existence thereof, which policy contains the same type of endorsements and provisions as provided in Section 8.2.

(c) If any of the Pre-existing Agreements consist of agreements with independent contractors to provide services in respect of the Facilities, the Authority shall use their respective best efforts to cause such contractors to name the Manager as an additional insured (in a similar fashion as provided in Section 8.5 (a) hereof) under any insurance maintained by such contractors pursuant to the terms of such Pre-existing Agreements and in such event to deliver to the Manager promptly after request therefore a certificate evidencing the existence thereof. In addition, if the Manager enters into any agreements during the term of this Agreement with any independent contractors for the provision of services hereunder, the Manager shall require such contractors to name the Manager and the Authority as an additional insureds under any insurance required by the Manager thereunder and to deliver to the Manager prior to the performance of such services a copy of such policy, plus a certificate evidencing the existence thereof, which policy contains the same type of endorsements and provisions as provided in Section 8.2.

Section 9. Ownership of Assets.

9.1 Ownership. The ownership of buildings and real estate, technical and office equipment and facilities, furniture, displays, fixtures, vehicles and similar tangible property located at the Facilities shall remain with the Authority, . Ownership of and title to all intellectual property rights of whatsoever value, held in the Authority's name shall remain in the name of the Authority. The ownership of consumable assets (such as office supplies and cleaning materials) purchased with Operating Revenues or Authority funds shall remain with the Authority, but such assets may be utilized and consumed by the Manager in the performance of services under this Agreement. The ownership or license rights of data processing programs and software owned or licensed by the Authority shall remain with the Authority, as the case may be, and the ownership or license rights of data processing programs and software owned or licensed by the Manager shall remain with the Manager. The Manager shall not take or use, for its own purposes, customer or exhibitor lists or similar materials developed by the Authority or any of its Affiliates or predecessors for the use of the Facilities, unless prior written consent is granted by the Authority. Ownership of equipment, furnishings, materials, or fixtures not considered to be real property and other personal property purchased by the Manager with Authority funds for use at and for the Facilities shall vest in the Authority automatically and immediately upon purchase or acquisition. The assets of the Authority, as described herein shall not be pledged, liened, encumbered or otherwise alienated or assigned without the prior written approval of the Authority.

9.2 Authority Obligations. Except as herein otherwise set forth, throughout the term of this Agreement, the Authority will maintain full beneficial use and ownership of the Facilities. The provisions of this Section 9.2 and Section 9.1 shall not preclude the transfer or assignment of use and ownership of the Facilities to another agency, authority, or unit of the State of New Jersey or any county or municipality thereof, provided that the right to receive Net Luxury Tax Revenues currently provided to the Authority for the Facilities are also transferred or assigned to such other agency, authority or unit or otherwise shall be made available for use in connection with the Facilities as contemplated by this Agreement.

9.3 Authority Payment Obligations and Disclaimer. (a) Notwithstanding any other provisions hereof, any and all payment obligations of the Authority under this Agreement are and shall be special obligations of the Authority payable solely and exclusively, to the extent available, from Operating

Revenues and Net Luxury Tax Revenues. No recourse shall be had to any other assets or funds of the Authority, and no personal liability whatever shall attach, or is or shall be incurred by, the members, officers, directors, agents or trustees as such, of the Authority or any successor thereto, or any of them for the payment or performance of any of Authority's obligations under this Agreement. Neither the State of New Jersey nor any such political subdivision thereof other than the Authority (to the limited extent set forth herein) is or shall be obligated to pay any such obligations of Authority and neither the faith and credit nor the taxing power of the State or any such political subdivision thereof is or shall be pledged to the payment of such obligations.

(b) Nothing contained in this Agreement shall preclude the Authority from issuing Luxury Tax Bonds for any authorized purposes.

Section 10. Assignment; Affiliates.

10.1 Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by the Manager, including as a result of a change of ownership or control, without the prior written consent of the Authority, which consent shall not be unreasonably withheld. Nothing contained herein, however, shall be construed in any manner as to limit or restrict the right of the Authority to assign this Agreement in its sole discretion, provided that assignee agrees in writing to the Manager to assume and comply with all of the terms and conditions of this Agreement.

10.2 Manager Affiliates.

(a) Transactions with Affiliates. Any contract entered into between the Manager and an Affiliate of the Manager relating to the Facilities shall be on terms and for prices customarily charged in the industry for comparable goods and services and shall be subject to the prior written approval of the Authority. In addition, the Manager as agent for the Authority, may rent the Facilities or any part thereof, to itself in connection with any event in the promotion of which the Manager is involved, so long as such rental is on prevailing rates and terms or such other rates and terms as the Authority's Executive Director approves.

(b) Conflicts of Interest. The Authority acknowledges that the Manager may manage other public assembly facilities, which may, from time to time, be in competition with the Facilities. The management of competing facilities will not, in and of itself, be deemed a conflict of interest or breach of the Manager's duties hereunder; provided, however, in all instances in which the Facilities is in competition with other public assembly facilities managed by the Manager for the solicitation of certain events, the Manager shall use all of its corporate and other resources to reasonably promote and market the Facilities in such a manner that does not disadvantage the Facilities relative to other potentially competing facilities that the Manager manages in other jurisdictions. In addition, the Manager shall at all times during the Initial Term and any Renewal Term, inform Authority in writing of any prospective public management opportunities that it is pursuing and/or submitting a bid response to that may in any way compete with any of the Facilities.

Section 11. Laws and Permits.

11.1 Permits, Licenses, Taxes and Liens. The Manager shall procure any and all permits and licenses required to fulfill its obligations hereunder, the cost of which shall be an Operating Expense.

The Authority shall cooperate with the Manager in applying for such permits and licenses. The Manager shall deliver copies of all such permits and licenses to the Authority.

11.2 Governmental Compliance. the Manager, its officers, agents and employees shall comply with all federal, state, local and municipal regulations, ordinances, statutes, rules, laws constitutional provisions and Casino Control Commission rules and regulations (collectively, "Laws") applicable to the Manager's services hereunder, including without limitation Title III of the ADA and the provision of such auxiliary aids or alternate services as may be required by the ADA (which obligation may, in turn, be imposed by the Manager on each individual licensee, lessee or renter of the Facilities). Nothing in this Section 11.2 or elsewhere in this Agreement shall, however, require the Manager to undertake any of the foregoing compliance activity, nor shall the Manager have any liability under this Agreement therefore, if (a) such activity requires any Capital Improvements or Capital Equipment purchases, unless the Authority provides funds for such Capital Improvements and Capital Equipment purchases pursuant to Section 5.8 hereof, or (b) any Pre-Existing Agreement or any license or rental agreement entered into by the Authority fails to require any licensee, lessee, tenant, promoter or user of any portion of the Facilities to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facilities. For the sake of clarity, the parties acknowledge that Authority shall have the right to require any licensee, lessee, tenant, promoter or user of any portion of the Facilities to comply, and to be financially responsible for compliance, with Title III of the ADA in connection with any activities of such licensee, lessee, tenant, promoter or user at the Facilities.

11.3 No Discrimination in Employment. In connection with the performance of work under this Agreement, the Manager shall not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation or any other reason prohibited under the New Jersey Law Against Discrimination ("LAD"). The Manager shall take affirmative action to ensure that such qualified applicants are recruited and employed and that employees are treated, during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation or any other reason prohibited under the LAD. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer of the State of New Jersey setting forth provision of this nondiscrimination clause.

Section 12. Termination.

12.1 Termination Upon Default. Either party may terminate this Agreement upon a default by the other party hereunder. A party shall be in default hereunder if (i) such party fails to pay any sum payable hereunder within thirty (30) days after same is due and payable, or (ii) such party fails in any material respect to perform or comply with any of the other terms, covenants, agreements or conditions hereof and such failure continues for more than thirty (30) days after written notice thereof from the other party. In the event that a default (other than a default in the payment of money) is not reasonably susceptible to being cured within the thirty (30) day period, the defaulting party shall not be considered in default if it shall within such thirty (30) day period have commenced with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default.

12.2 Termination Other than Upon Default.

(a) Either party shall have the right to terminate this Agreement (or partially terminate this Agreement, as applicable) under the circumstances and as specified in Section 14.4(d).

(b) Additionally, the Manager shall have the right to terminate this Agreement in accordance with Section 5.2(b) hereof.

12.3 Effect of Termination. In the event this Agreement is terminated, (i) all Operating Expenses incurred or committed for prior to the date of termination shall be paid using funds on deposit in the account(s) described in Sections 5.6 and 5.7 and to the extent such funds are not sufficient, the Authority shall pay such Operating Expenses and shall indemnify and hold the Manager harmless therefrom (provided that if the termination is by the Authority due to the Manager's default under Section 12.1 hereof, such indemnification shall not extend to Operating Expenses incurred as a result of the default by the Manager which was the grounds for such termination), and (ii) the Authority shall promptly pay the Manager all fees earned to the date of termination (the Base Fee and incentive fee described in Section 4 hereof being subject to pro-ration), provided that the Authority shall be entitled to offset against such unpaid fees any damages (actual, not consequential) incurred by the Authority in remedying any default by the Manager hereunder which resulted in such termination (other than the fees or expenses of any replacement manager for the Facilities). Upon a termination pursuant to Section 12.1, all further obligations of the parties hereunder shall terminate except for the obligations in this Section 12.3 and in 5.9, 5.10(b) and (c), 8.1, 9.3, and 12.4; provided, however, that if such termination is the result of a willful default, the non-defaulting party exercising its right to terminate this Agreement shall be entitled to recover damages for breach arising from such willful default, subject to the limitations set forth in Section 8.1(e).

12.4 Surrender of Premises. Upon expiration or termination of this Agreement (termination shall, for all purposes in this Agreement, include termination pursuant to the terms of this Section 12 and any expiration of the term hereof), the Manager shall surrender and vacate the Facilities upon the effective date of such termination. The Facilities and all equipment and furnishings thereat shall be returned to the Authority in the condition received, reasonable wear and tear excepted; provided, however, the condition of the Facilities and all equipment and furnishings thereat shall in any event be subject to the Authority making Operating Revenue or other funds available for the maintenance of the foregoing. All reports, records, including financial records, and documents maintained by the Manager at the Facilities relating to this Agreement other than materials containing the Manager's proprietary information shall be immediately surrendered to the Authority by the Manager upon termination.

12.5 Cooperation of the Manager Upon Termination.

(a) In the event that this Agreement is terminated for any reason, including expiration hereof or the default by either party hereto, the Manager shall use its best efforts to cooperate with Authority and the new manager of the Facilities in the transition to the new manager of the facilities, including, without limitation, providing Authority and the new manager personal access to meet and have personal discussions with the Manager's General Manager and all other employees of the Manager relating to information and documentation of the operations of the Facilities, the Manager's services pursuant to this Agreement, negotiations for employment of such employees (but only to the extent such employees are not subject to the restrictions in Section 7.1(e)) with the successor manager for the Facilities and for other transition purposes. Such cooperation shall be provided promptly and

on a reasonable basis to Authority and the new manager of the Facilities, and without restrictions or interference by Authority.

(b) In the event that the parties hereto are negotiating in good faith to extend the Initial Term or any Renewal Term of this Agreement, if requested by the Authority and the Authority is not at that time in default of this Agreement, the Manager agrees to extend the then Initial Term or Renewal Term, as the case may be, on a month-to-month basis until the commencement date of the services of the new manager for the Facilities, with the Manager's compensation described in Section 4 of this Agreement to be prorated accordingly. In the event that the parties cease their good faith negotiations, if requested by the Authority and provided the Authority is not at that time in default of this Agreement, the Manager further agrees to continue the then Initial Term or Renewal Term of this Agreement, as the case may be, on a month-to-month basis until the commencement date of the services of the new manager for the Facilities, in accordance with the other provisions of this Subsection 12.5 of this Agreement, provided that in no event shall the Manager be required to extend such services for more than nine (9) months beyond the end of the Initial Term or Renewal Term, as applicable, and only so long as the Authority is not in default under the terms of this Agreement.

(c) In the event that this Agreement is terminated for any reason, and the commencement date of the services of the new manager for the Facilities does not occur on or as of the date that this Agreement terminates, if requested by the Authority and provided the Authority is not at that time in default of this Agreement, the Manager agrees to extend the term hereof, and all of its services hereunder, at the request of Authority, on a month-to-month basis until the commencement date of the services of the new manager of the Facilities, provided that in no event shall the Manager be required to extend such services for more than nine (9) months beyond the end of the Initial Term or Renewal Term, as applicable, and only so long as the Authority is not in default under the terms of this Agreement. In such event, the Manager shall be entitled to a pro-rated amount of its compensation as described in Section 4 of this Agreement.

Section 13. Cooperation and Use of Facilities

13.1 Cooperation. Each of the parties desire to cooperate with the other parties hereto in the operation and maintenance of the Facilities pursuant to the terms hereof. In keeping with this cooperative spirit and intent, the parties shall use reasonable efforts (for a minimum of forty (40) days) to settle amicably any dispute or disagreement between them or any grievance that one party may have with the other through direct communication between the parties hereto (through their respective agents and representatives) prior to instituting any legal action against the other (except for actions for injunctive relief, for which no such waiting period shall apply). In order to facilitate the settlement of such matters, unless the parties hereto expressly agree otherwise in a particular case or where otherwise required by law, these direct communications shall not be proceeded or accompanied by any public announcements or statements by or on behalf of either party hereto with respect to the existence or the nature of such dispute, disagreement or grievance.

13.2 Use of Facilities at Direction of Authority

(a) At the direction of the Authority's Executive Director, upon reasonable advance notice and subject to availability, the Manager shall provide use of the Facilities or any part thereof to civic and nonprofit organizations located in the State of New Jersey at reduced rates. All expenses, including but not limited to ushers, ticket-takers, security and other expenses incurred in connection with the use of the Facilities by such organizations, if not reimbursed to the Manager by the

organization using the Facilities, shall be reimbursed by Authority (if applicable) or reimbursed or credited by the Authority to the Manager for deposit into the operating accounts specified in Sections 5.6 and 5.7.

(b) The Authority shall have the right to use the Facilities or any part thereof, upon reasonable advance notice and subject to availability, for such purposes as meetings, seminars, training classes or other uses without the payment of any rental, license or use fee (or at a reduced fee) except that direct out-of-pocket expenses incurred in connection with such uses shall be paid by the Authority.

(c) The Authority shall not schedule the use of the Facilities pursuant to subparagraphs (a) and (b) above if such use will conflict with paying events booked by the Authority as provided herein or the Manager, and shall in all instances be subordinate thereto in terms of priority of use of the Facilities. If the Facilities or part thereof is to be used at the Authority's request or by the Authority pursuant to subparagraph (a) or (b) above, a rent or use fee which otherwise would be chargeable for such event shall be deemed to have been paid and such deemed payment shall constitute Operating Revenues for the purpose of calculating the Manager's incentive fee pursuant to Section 4.2 above.

Section 14. Miscellaneous.

14.1 No Partnership or Joint Venture. Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture between the Authority, on the one hand, and the Manager, on the other hand. None of the officers, agents or employees of the Manager shall be or be deemed to be employees of the Authority for any purpose whatsoever. In operating the Facilities, entering into contracts, accepting reservations for use of the Facilities, and conducting financial transactions for the Facilities, the Manager acts on behalf of and as agent for the Authority (but subject to the limitations on the Manager's authority as set out in this Agreement), with the fiduciary duties required by law of a party acting in such capacity.

14.2 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings with respect thereto. No other agreements, representations, warranties or other matters, whether oral or written, will be deemed to hind the parties hereto with respect to the subject matter hereof.

14.3 Written Amendments. This Agreement shall not be altered, modified or amended in whole or in part, except in a writing executed by each of the parties hereto.

14.4 Force Majeure.

(a) No party will be liable or responsible to the other party for any delay, damage, loss, failure, or inability to perform hereunder caused by "Force Majeure" if notice is provided to the other party within ten (10) days of date on which such party gains actual knowledge of the event of "Force Majeure" that such party is unable to perform. The term "Force Majeure" as used in this Agreement means the following: an act of God, strike, war, public rioting, lightning, fire, storm, flood, explosions, inability to obtain materials, supplies, epidemics, landslides, lightning storms, earthquakes, floods, storms, washouts, civil disturbances, explosions, breakage or accident to machinery or lines of equipment, temporary failure of equipment, freezing of equipment and any other cause whether of the kinds specifically enumerated above or otherwise which is not reasonably

within the control of the party whose performance is to be excused and which by the exercise of due diligence could not be reasonably prevented or overcome (it being acknowledged that under no circumstances shall a failure to pay amounts due and payable hereunder be excusable due to a Force Majeure). Notwithstanding anything in this Section 14.4 to the contrary, if a Force Majeure Event occurs hereunder, Authority may require the Manager to provide services under this Agreement to the extent such services are needed for the public welfare, health and/or safety of persons in and around the Facilities, and the Authority shall compensate the Manager for such services based upon a compensation arrangement to be mutually determined by the parties to the extent a Force Majeure event occurs.

(b) Neither party hereto shall be under any obligation to supply any service or services if and to the extent and during any period that the supplying of any such service or services or the provision of any component necessary therefore shall be prohibited or rationed by any Law.

(c) Except as otherwise expressly provided in this Agreement, no abatement, diminution or reduction of the payments payable to the Manager shall be claimed by the Authority or charged against the Manager, nor shall the Manager be entitled to additional payments beyond those provided for in this Agreement for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any present or future Laws, or by priorities, rationing, or curtailment of labor or materials, or by war or any matter or thing.

(d) In the event of damage to or destruction of a Facility by reason of fire, storm or other casualty or occurrence of any nature or any regulatory action or requirements that, in either case, is expected to render such Facility as the case may be, materially untenable, notwithstanding the Authority's reasonable efforts to remedy such situation, for a period estimated by an architect selected by the Authority at the request of the Manager of at least one hundred eighty (180) days from the happening of the fire, other casualty or any other such event, either party may terminate this Agreement as it relates to such Facility upon written notice to the other. In such case, if the damage or destruction affects only one Facility, this Agreement shall remain in effect with respect to the other Facility provided that the parties shall equitably adjust the compensation and financial guarantee terms to account for the reduced scope of services and changes in anticipated financial performance of the Facilities as contemplated hereunder.

(e) The Manager may suspend performance required under this Agreement with respect to a Facility, without any further liability, in the event of any Force Majeure, which Force Majeure event is of such effect and duration as to effectively curtail the use of such Facility so as to effect a substantial reduction in the need for the services provided by the Manager for a period in excess of ninety (90) days; provided, however, that for the purposes of this subsection, the Manager shall have the right to suspend performance retroactively effective as of the date of the use of such Facility was effectively curtailed. "Substantial reduction in the need for these services provided by the Manager" shall mean such a reduction as shall make the provision of any services by the Manager economically impractical. No payments of the Base Fee or any Incentive Fees otherwise due and payable to the Manager for the subject Facility shall be made by the Authority during the period of suspension. The terms of this Agreement, including the fees and financial guarantee terms, shall continue to be effective with respect to the remaining unaffected Facility (if any) provided that the parties shall equitably adjust the compensation and financial guarantee terms to account for the reduced scope of services and changes in anticipated financial performance of the Facilities as contemplated hereunder.

14.5 Revenue Procedure 2017-13. The parties intend that this Agreement be a qualified management contract for purposes of Revenue Procedure 2017-13 (“Rev Proc 2017-13”) promulgated by the Internal Revenue Service (“IRS”) or any successor rules promulgated by the United States Treasury or IRS. If it is determined by the Authority’s bond counsel that this Agreement is not a qualified management contract, the parties agree to make modifications to this Agreement so that the same is, in the opinion of such counsel, a qualified management contract for purposes of such Revenue Procedure. In addition, Sections 2.3 (c), 2.3(o), 3.1, 3.2, 4.1, 4.2 and 5.1 of this Agreement may not be amended or supplemented unless the Authority obtains an opinion from Authority’s bond counsel that such amendment or supplement shall not cause this Agreement to fail to comply with Rev Proc. 97-13 or any successor rules promulgated by the United States Treasury or IRS.

14.6 Binding Upon Successors and Assigns; No Third-Party Beneficiaries.

(a) This Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon, the parties hereto and each of their respective successors and permitted assigns.

(b) This Agreement shall not be construed as giving any person, other than the parties hereto and their successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any of the provisions herein contained, this Agreement and all provisions and conditions hereof being intended to be, and being, for the sole and exclusive benefit of such parties and their successors and permitted assigns and for the benefit of no other person or entity.

14.7 Notices. Any notice, consent or other communication given and/or required pursuant to this Agreement will be in writing and will be effective either (a) when delivered personally to the party for whom intended, (b) on the second business day following mailing by an overnight courier service that is generally recognized as reliable, (c) on the fifth day following mailing by certified or registered mail, return receipt requested, postage prepaid, or (d) on the date transmitted by telecopy as shown on the telecopy confirmation therefore as long as such telecopy transmission is followed by mailing of such notice by certified or registered mail, return receipt requested, postage prepaid, in any case addressed to such party as set forth below or as a party may designate by written notice given to the other party in accordance herewith.

To the Authority:

Casino Reinvestment Development Authority
15 South Pennsylvania Avenue
Atlantic City, NJ 08401
Attention: Executive Director

With a copy to:

Casino Reinvestment Development Authority
15 South Pennsylvania Avenue
Atlantic City, NJ 08401
Attention: General Counsel

To the Manager:

With a copy to:

14.8 Section Headings and Defined Terms. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning and interpretation of this Agreement. The terms defined herein and in any agreement executed in connection herewith include the plural as well as the singular and the singular as well as the plural, and the use of masculine pronouns shall include the feminine and neuter. Except as otherwise indicated, all agreements defined herein refer to the same as from time to time amended or supplemented or the terms thereof waived or modified in accordance herewith and therewith.

14.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original copy of this Agreement, and all of which, when taken together, shall be deemed to constitute but one and the same agreement.

14.10 Severability. The invalidity or unenforceability of any particular provision, or part of any provision, of this Agreement shall not affect the other provisions or parts hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions or parts were omitted.

14.11 Non-Waiver. A failure by a party to take any action with respect to any default or violation by the other of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any prior, contemporaneous, or subsequent violation or default or with respect to any continuation or repetition of the original violation or default.

14.12 Approvals. Each of the Authority and the Manager represents and warrants that all required approvals have been obtained, and each of them has full legal right, power and authority to enter into and perform its respective obligations hereunder.

14.13 Governing Law. This Agreement will be governed by and construed in accordance with the internal laws of the State of New Jersey, without giving effect to otherwise applicable principles of conflicts of law.

[Remainder of this page is left blank. Signature page(s) to follow.]

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

**CASINO REINVESTMENT DEVELOPMENT
AUTHORITY**

By: Matthew J. Doherty
Executive Director

Date

Manager: _____

By: _____

Title: _____

Date _____

Exhibit A

Incentive Fee Schedule