

1 RON BENDER (SBN 143364)  
JOHN-PATRICK M. FRITZ (SBN 245240)  
2 LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.  
3 10250 Constellation Boulevard, Suite 1700  
Los Angeles, California 90067  
4 Telephone: (310) 229-1234  
Facsimile: (310) 229-1244  
5 Email: RB@LNBYB.COM; JPF@LNBYB.COM

6 Proposed Counsel for Chapter 11 Debtor and Debtor in Possession

7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **Southern District of California**

10  
11 In re: ) Case No. 12-09415-PB11  
12 SANTA YSABEL RESORT AND CASINO, ) Chapter 11  
13 Debtor and Debtor in Possession. )  
14 ) **OPPOSITION TO MOTION TO DISMISS**  
15 ) **BANKRUPTCY CASE FOR LACK OF**  
16 ) **ELIGIBILITY AND AUTHORITY**  
17 )  
18 ) Date: September 4, 2012  
19 ) Time: 11:00 a.m.  
20 ) Place: 325 West F. Street  
21 ) Dept. 4, Courtroom 328  
22 )  
23 ) Judge: Hon. Peter W. Bowie  
24 )  
25 )  
26 )  
27 )  
28 )

## **TABLE OF CONTENTS**

I. INTRODUCTION .....	2
II. THE IIPAY NATION HAS NO INTENT TO BE THE DEBTOR IN THIS OR ANY OTHER BANKRUPTCY CASE .....	3
III. THE DEBTOR IS AN UNINCORPORATED COMPANY UNDER THE BANKRUPTCY CODE .....	3
A. Defining Unincorporated Company .....	4
1. The First Circuit's Test for an Unincorporated Company is Not Appropriate Due to Its Focus on Trusts and Partnerships .....	5
2. The Second, Third, and Seventh Circuits' Tests Form the Appropriate Test For Determining Whether the Debtor is an Unincorporated Company .....	10
3. The Court Should Employ a Broad and Expansive Reading to Corporations and Unincorporated Companies .....	12
B. The Court Should Find that the Debtor Is an Unincorporated Company Eligible for Bankruptcy Protection and Separate from the Iipay Nation .....	13
IV. CONTRARY TO THE YAN'S ASSERTIONS, THE COURT SHOULD FIND THAT THE DEBTOR AND THE IIPAY ARE SEPARATE ENTITIES .....	18
A. The Santa Ysabel Resort and Casino Is Not the Iipay Nation .....	18
B. The Loan Documents Are No Bar to the Finding of the Debtor as an Unincorporated Company Separate from the Iipay Nation .....	20
C. The Debtor Is an Unincorporated Company Separate from the Iipay Nation Without Any Violation of Federal, State, or Tribal Law .....	26
D. Other Actions of the Debtor, the Debtor's Proposed Bankruptcy Counsel, and the Iipay Nation Do Not Bar the Finding of an Unincorporated Company .....	30
V. THE DEBTOR HAD PROPER AUTHORITY TO FILE BANKRUPTCY .....	34
A. The Debtor Has Proper Authority for Its Bankruptcy Filing .....	34
B. The Debtor's Bankruptcy Filing and Status as a Debtor in Possession Does not Violate IGRA .....	35
VI. CONCLUSION .....	36

1	DECLARATION OF VIRGIL PEREZ.....	37
2	DECLARATION OF DAVID CHELETTE .....	40
3	DECLARATION OF JOHN-PATRICK M. FRITZ, ESQ.....	157
4	DECLARATION OF HUGGY LAMAR PRICE, ESQ.....	164

# **TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>FEDERAL CASES</b>	
<i>Allen v. Gold Country Casino</i> 464 F.3d 1044 (9th Cir.2006).....	27
<i>Breakthrough Management Group v. Chukchansi Gold Casino and Resort</i> 629 F.3d 1173 (10th Cir.2010).....	19, 27
<i>Cabazon Indian Casino v. IRS (In re Cabazon Indian Casino)</i> 57 B.R. 398 (9th Cir.B.A.P.1986).....	19
<i>Chicago Title &amp; Trust Co. v. Ryan (In re Midwest Athletic Club)</i> 161 F.2d 1005 (7th Cir.1947).....	20, 21, 26
<i>Gallagher v. Hannigan</i> 5 F.2d 171 (1st Cir.1925) .....	20
<i>In re Associated Trust</i> 222 F. 1012 (1914).....	6, 7
<i>In re Avalon Hotel Partners</i> 302 B.R. 377.....	34
<i>In re Christenberry</i> 336 B.R. 353 (Bankr.E.D.Tenn.2005).....	32
<i>In re Las Vegas Monorail Co.</i> 429 B.R. 770 (Bankr.D.Nev.2010).....	4
<i>In re Lewis</i> 461 B.R. 414 (Bankr.E.D.Ky.2011).....	31
<i>In re Samuels</i> 215 F. 845 (2d Cir.1914).....	7, 8, 9
<i>In re T.W. Kroeger Trucking Co.</i> 105 B.R. 512 (Bankr.E.D.Mo.1989) .....	5
<i>In re Tidewater Coal Exchange</i> 280 F. 638 (2d Cir.1922).....	11, 13, 14, 15
<i>Nickolas v. Witter (In re Peer Manor Bldg. Corp.)</i> 143 F.2d 769 (7th Cir.1944).....	32
<i>NLRB v. Bildisco &amp; Bildisco</i> 465 U.S. 513 (1983) .....	35

1	<i>Pope &amp; Cottle Co. v. Fairbanks Realty Trust</i>	
2	124 F.2d 132 (1st Cir.1941) .....	4
3	<i>Vadakin v. Cass (In re Order of Sparta)</i>	
4	242 F. 235 (3d Cir.1917) .....	11, 16, 17, 32
5	<i>Wells Fargo Bank, N.A. v. Lake of the Torches Economic Development Corp.</i>	
6	658 F.3d 684 (7th Cir.2011).....	27
7	<b>FEDERAL STATUTES</b>	
8	11 U.S.C. § 101(9).....	4, 10
9	<b>OTHER STATE STATUTES</b>	
10	Bankruptcy Act of 1898 .....	4, 13
11	Iipay Nation of Santa Ysabel Gaming Ordinance .....	28
12	Iipay Nation's Gaming Ordinance .....	29
13	<b>OTHER AUTHORITIES</b>	
14	2 COLLIER ON BANKRUPTCY ¶ 101.09, at 101-70 .....	10
15	2 COLLIER ON BANKRUPTCY ¶ 101.09, at 101-67 .....	5

## I.

## INTRODUCTION

Santa Ysabel Resort and Casino (the "Debtor"), the chapter 11 debtor and debtor in possession in the above-captioned bankruptcy case, hereby submits its opposition (the "Opposition") to the *Motion to Dismiss Bankruptcy Case for Lack of Eligibility and Authority* (the "Motion") [docket entry no.57] filed by the Yavapai-Apache Nation (the "YAN"). Capitalized terms used herein shall have the same meaning as ascribed to them in the Motion unless otherwise defined with specificity or implied by context.

Without deciding or addressing the issue, the Debtor does not argue with the YAN's assertion that the Iipay Nation of Santa Ysabel (the "Iipay Nation") is a governmental unit under section 101(27) of the Bankruptcy Code and therefore would be ineligible to be a debtor under section 109 of the Bankruptcy Code. The Iipay Nation has never intended for itself to be the debtor in this bankruptcy case, and if the Court determined the Debtor and the Iipay Nation to be one and the same, then the Debtor and Iipay Nation voluntarily would request dismissal of the case.

However, the Debtor does dispute the YAN's contention that the Debtor and the Iipay Nation are one and the same. The Debtor maintains, by fact and law, that it is a separate entity, an unincorporated company, and eligible to be a chapter 11 debtor. The YAN's Motion is inadequate in its legal analysis of the meaning of "unincorporated company," and, consequently, its examination of the facts is misguided and uninformative on the issue. Decades of case law from numerous Circuit Courts of Appeal have developed a test for finding that an entity is an unincorporated company as long as there is a multiplicity of people engaged in a common business under a common name. The Debtor is a business of approximately 120 people engaged in the business of running a casino under the Debtor's name, "Santa Ysabel Resort and Casino." The inquiry is made by reference to the facts operating in the real world and cannot be determined by resorting to paper trails, pre-bankruptcy and non-bankruptcy statements, preconceived notions about an entity, or even activities by the entity that would be deemed to violate the law. As



1 explained in greater detail below, the Court should find that the Debtor is an unincorporated  
2 company, separate from, though wholly owned by, the Iipay Nation, and eligible to be a chapter  
3 11 debtor.

4 The Debtor did not file the case in bad faith, there is no "new debtor syndrome" under  
5 these facts, and the filing is not a litigation tactic. Furthermore, the Debtor had proper authority  
6 to file its bankruptcy case, and the filing was not in violation of tribal, federal, or any other law.  
7 Accordingly, the Court should deny the Motion and permit the Debtor to continue with its  
8 reorganization.

## 9 II.

### 10 THE IIPAY NATION HAS NO INTENT TO BE 11 THE DEBTOR IN THIS OR ANY OTHER BANKRUPTCY CASE

12 The Debtor neither accepts nor opposes the YAN's arguments and theories regarding  
13 whether the Iipay Nation is a governmental unit as defined in 11 U.S.C. § 101(27) and therefore  
14 ineligible to be a chapter 7 or chapter 11 debtor. The intent of the Debtor, and of the Iipay Nation  
15 as 100% owner of the Debtor, was to file the chapter 11 bankruptcy for the Santa Ysabel Resort  
16 and Casino only. If the Court determines that the Santa Ysabel Resort and Casino is not its own  
17 entity as an unincorporated company separate and apart from the Iipay Nation, then the Iipay  
18 Nation voluntarily requests that the Court dismiss the bankruptcy case.

19 Accordingly, the arguments as to whether the Iipay Nation is a governmental unit or  
20 eligible to file bankruptcy are moot, and the inquiry as to the Motion should start with whether the  
21 Debtor is an unincorporated company and is itself eligible for bankruptcy.

## 22 III.

### 23 THE DEBTOR IS AN UNINCORPORATED 24 COMPANY UNDER THE BANKRUPTCY CODE

25 The Debtor is an unincorporated company because it is an enterprise of numerous people  
26 joined in a common business and conducting its affairs somewhat after the pattern of a  
27 corporation under a common name. By virtue of being an "unincorporated company," the Debtor  
28

1 is a “corporation” under the Bankruptcy Code, and thus eligible to be a chapter 11 debtor. *See* 11  
 2 U.S.C. § 101(9) (defining “corporation” to include “unincorporated company”), § 101(41)  
 3 (defining “person” to include a “corporation” and specifically exclude a “governmental unit”),  
 4 and §§ 109(b) and (d) (setting forth that a “person” may be a chapter 11 debtor, except in certain  
 5 instances involving certain brokers, banks, and insurance companies, which are irrelevant here).

6 This Opposition does not discuss the issue of whether the Debtor would be a  
 7 “governmental unit” under the Bankruptcy Code because the YAN did not assert that the Debtor  
 8 was a governmental unit separate and apart from the Iipay Nation but rather that the Debtor was  
 9 one in the same with the Iipay Nation, which would be a governmental unit. The Debtor’s  
 10 separate opposition to the separately filed *County of San Diego’s Motion to Dismiss Debtor’s*  
 11 *Bankruptcy Case* will address the issue of whether the Debtor as a separate entity is a  
 12 “governmental unit” under the Bankruptcy Code. This Opposition to the YAN’s Motion refutes  
 13 the YAN’s argument that (1) the Debtor is not an unincorporated company and (2) that the Debtor  
 14 and the Iipay Nation are one and the same entity.

15 As explained below, the Court should find that the Debtor is an unincorporated company,  
 16 separate and apart from the Iipay Nation, and eligible to be a chapter 11 debtor under the  
 17 Bankruptcy Code.

#### 18 **A. Defining Unincorporated Company**

19 The Bankruptcy Code does not define unincorporated company. Neither did its  
 20 predecessor, the Bankruptcy Act of 1898. *Pope & Cottle Co. v. Fairbanks Realty Trust*, 124 F.2d  
 21 132, 134 (1st Cir.1941). Nonetheless, we are guided by case law from multiple Circuit Courts of  
 22 Appeal to look for indicia of an unincorporated company. These cases, though written under the  
 23 old Bankruptcy Act, are instructive nonetheless because the definitions and practices of  
 24 bankruptcy law under the Bankruptcy Act were not eroded by the Bankruptcy Code absent a clear  
 25 indication that Congress intended such a departure. *In re Las Vegas Monorail Co.*, 429 B.R. 770,  
 26 777 (Bankr.D.Nev.2010) (citing *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992); *Travelers Cas. and*  
 27 *Sur. Co. of America v. Pacific Gas and Elec. Co.*, 549 U.S. 443, 454 (2007); *Cohen v. de la Cruz*,



523 U.S. 213, 221 (1998); and *Penn. Dept. of Public Welfare v. Davenport*, 495 U.S. 552, 563 (1990)). “The definition of ‘corporation’ in paragraph (9) [of the Bankruptcy Code] is similar to the definition under Section 1(8) of the [Bankruptcy] Act.” 2 COLLIER ON BANKRUPTCY ¶ 101.09, at 101-67 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev.).

The YAN’s Motion gives inadequate analysis to the primary question in determining whether the Debtor is an unincorporated company. The YAN propose a two-part test from *In re T.W. Kroeger Trucking Co.*, 105 B.R. 512 (Bankr.E.D.Mo.1989), and cases cited therein from the First Circuit, to limit the finding of an unincorporated company to one that (i) consists of multiple persons joining together and (ii) provides some form of limited liability for its members. Motion at p.7 ln.18-20. The YAN then proceed to analyze these two points – and only these two points – in short shrift in a single paragraph. Motion p.8 ln.6-19. The test and inquiry into whether an entity is an unincorporated company, though, is much more involved, and the majority of Circuits that address the issue depart markedly from the analysis relied on in *T.W. Kroeger Trucking* and the First Circuit cases upon which the YAN relies.

**1. The First Circuit’s Test for an Unincorporated Company Is Not Appropriate Due to Its Focus on Trusts and Partnerships**

Leading cases in the First Circuit examine the existence of unincorporated companies on a case-by-case basis and based upon each case’s particular facts but include particular criteria that are not included in the tests developed by other Circuit Courts of Appeal. As one leading case in the First Circuit stated:

The courts have not attempted to give any comprehensive definition of “unincorporated company” but have inclined to decide each case on its facts as it arose. In general, the organizations which they have held to be subject to involuntary bankruptcy in this category have been unincorporated associations of persons joining together at least in part for some common business or commercial purpose, and conducting their affairs somewhat after the pattern of corporations.

*Pope & Cottle Co. v. Fairbanks Realty Trust*, 124 F.2d 132, 134 (1941). In another leading case, the First Circuit also stated:

1 . . . as to the words “unincorporated company,” . . . “company”  
 2 would seem to imply an association of individuals, not partners,  
 3 carrying on business under a distinct name, and having common  
 4 rights inter se, but having no individual ownership in the joint  
 5 property, no individual control over the business in which their  
 joint capital is embarked; and no direct individual liability for the  
 company’s debts.

6 *Gallagher v. Hannigan*, 5 F.2d 171, 175 (1st Cir.1925). Synthesizing these two cases, the  
 7 following criteria would indicate an unincorporated company (at least in the First Circuit):

- 8 1. An association of persons or individuals, not partners;
- 9 2. Joined together at least in part of some common business or commercial purpose;
- 10 3. Carrying on business under a distinct name;
- 11 4. Conducting their affairs somewhat after the pattern of corporations;
- 12 5. Having common rights inter se;
- 13 6. Having no individual ownership in the joint property;
- 14 7. Having no individual control over the business in which their joint capital is  
 15 embarked; and
- 16 8. Having no direct individual liability for the company’s debts.

17 The first four (4) of the above-enumerated points from the First Circuit’s analysis is  
 18 similar to the analysis used by the other Circuits and instructive on whether an entity is an  
 19 unincorporated company. The last four (4) points, however, depart markedly from the other  
 20 Circuits’ analyses and are not instructive for determining whether an entity is an unincorporated  
 21 company unless a court also is addressing the potential existence of a trust or partnership. This  
 22 line of cases in the First Circuit derives from bankruptcy cases filed in Massachusetts where the  
 23 courts were asked to determine whether debtors named as “trusts” under Massachusetts state law  
 24 were eligible for bankruptcy as unincorporated companies or otherwise ineligible trusts or  
 25 partnerships. *Gallagher* cites with some prominence to the case of *In re Associated Trust*, 222 F.  
 26 1012 (1914), and *Pope & Cottle* cites to both *Gallagher* and *In re Associated Trust*, with  
 27 importance in its analysis. *In re Associated Trust* involved an unusual question of whether a  
 28

Massachusetts real estate trust is a trust, an unincorporated company, or a partnership, and this analysis is not particularly helpful for courts outside of the First Circuit, because the Massachusetts real estate trust is “a form of business organization which is not uncommon in this state [Massachusetts] and is very uncommon elsewhere.” 222 F. at 1013. These entities were sometimes treated as partnerships and sometimes as trusts under Massachusetts law for tax purposes, and, thus, the court’s analysis of whether it was a trust, partnership, or otherwise an unincorporated company would necessarily involve questions bearing on all three types of entities. *See id.*

Both of the courts in *Gallagher* and *Pope & Cottle* picked up on these inclusive points in their respective analyses as both cases also involved trusts organized in Massachusetts. *Pope & Cottle*, 124 F.2d at 133 (finding the entity in question to be nothing other than a family trust); *Gallagher*, 5 F.2d at 172-73 (noting that the entity in question had established itself formally in the manner of a trust under Massachusetts law but went on to conduct no other business except a Ponzi scheme in the day and age when Charles Ponzi was caught and arrested for doing so). Importantly, the court in *Gallagher* cited prominently to *In re Samuels*, 215 F. 845 (2d Cir.1914), a case that gave great analysis to the issue of whether partnerships were eligible for bankruptcy, and tied that analysis into the examination of unincorporated companies. *Gallagher*, 5 F2d at 175.

The relevance of the First Circuit’s inclusion of the partnership and trust analysis when examining the Massachusetts trust is shown by reference to the Bankruptcy Act’s definition of “corporation” as enacted at the time of those cases:

“Corporations” shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association, joint stock companies, unincorporated companies and associations, and any business conducted by a trustee, or trustees, wherein beneficial interest or ownership is evidenced by certificate or other written instrument.

1 *Pope & Cottle*, 124 F.2d at 134-35 (quoting Section 1(6) of the Bankruptcy Act (as amended in  
2 1926) (emphasis added)).

3 Corporations shall include all bodies having any of the powers and  
4 privileges of private corporations not possessed by individuals or  
5 partnerships and shall include partnership associations organized  
6 under laws making the capital subscribed alone responsible for the  
7 debts of the association, joint-stock companies, unincorporated  
8 companies and associations, and any business conducted by a  
9 trustee or trustees wherein beneficial interest or ownership is  
10 evidenced by certificate or other written instrument.

11 *Id.* at 135 (quoting Section 1(8) of the Bankruptcy Act (as amended in 1938) (emphasis added)).

12 As shown by the qualifying language linked to trusts and partnerships in the definition, only  
13 certain types of trusts or partnerships were eligible to be “corporations” and, thus, eligible for  
14 bankruptcy. In the context of examining entities under Massachusetts law that were sometimes  
15 considered trusts and at other times partnerships under state law, and at the same time alleged to  
16 be unincorporated companies by creditors seeking to have them adjudicated bankrupt debtors, the  
17 Court had to devise a test that would speak to the possibility of all three of these types of entities  
18 and ensure that it would not grant an entity bankruptcy eligibility as an unincorporated company  
19 when it was to be denied eligibility due to its status as a partnership or trust.

20 The Court should find that the YAN’s proposed test – that there should be (i) multiple  
21 persons joining together (ii) with some form of limited liability for its members – is wrong  
22 because it focuses on the partnership inquiry and ignores the factors relevant to the inquiry on  
23 unincorporated companies. A partnership, logically, must have multiple persons, and limited  
24 liability was necessary to distinguish those “partnerships” that were classified as “corporations”  
25 from other partnerships subject to special rules of insolvency. As explained in *In re Samuels*, a  
26 partnership cannot be adjudicated a bankrupt without involving the assets and liabilities of both  
27 the partnership and its individual partners:  
28

There are many decisions that a partnership is not insolvent within  
the meaning of the Bankruptcy Act unless all its members are  
insolvent . . . the rule that there can be bankruptcy of a partnership  
without bankruptcy of all the partners (save in exceptional cases) is



1 based, not upon the words of the statute, but upon general  
2 principles of law.

3 It is impossible . . . to declare a partnership insolvent so long as the  
4 partners are able to pay its debts and theirs, whether out of joint or  
5 separate estate, and so the courts have generally held that a  
6 partnership is not insolvent unless by the insolvency of all its  
7 partners.

8 \*\*\*

9 The reason for the requirement is that every member of a  
10 partnership is liable in solido for all of the firm debts, regardless of  
11 any agreement between the partners. . . . But if in fact there is a  
12 partner whose individual estate is ample to pay the firm debts, as  
13 well as his own, the firm is not insolvent under a law which defines  
14 insolvency as a condition where the property of the debtor at a fair  
15 valuation is insufficient to pay his debts.

16 \*\*\*

17 We must therefore accept it as established law that a partnership is  
18 not bankrupt so long as any of the members who compose it is  
19 individually solvent.

20 *In re Samuels*, 215 F. at 847-49 (internal quotations and citations omitted). Consistent with this  
21 explanation of partnerships and bankruptcy, the Bankruptcy Act specified that to be a  
22 “corporation” partnerships would have to be “partnership associations organized under laws  
23 making the capital subscribed alone responsible for the debts of the association.” *See* Section  
24 1(6) of the Bankruptcy Act (as amended in 1926) and Section 1(8) of the Bankruptcy Act (as  
25 amended in 1938) above. Therefore, the YAN’s proposed test of a multiplicity of individuals  
26 with limited liability is nothing more than the test to distinguish between eligible and ineligible  
27 partnerships under the Bankruptcy Act. This is not surprising since the YAN’s proposed test  
28 relies heavily on First Circuit case law examining Massachusetts trusts that were sometimes  
trusts, sometimes partnerships, and sometimes unincorporated companies, but it is wholly  
inappropriate in that it ignores the other factors in the analysis.

///

1 The Court should find that the YAN's citation to Collier is equally misplaced. Motion p.8  
 2 In.4-5. The YAN cite Collier as stating: "Under the Code, when personal liability co-exists with  
 3 capital liability, such body will not be deemed a corporation for purposes of section 101(9)." 2  
 4 COLLIER ON BANKRUPTCY ¶ 101.09, at 101-70. However, this quote speaks to partnerships, not  
 5 unincorporated companies, as the quote is bookended with comments on partnerships at both  
 6 sides. In full context, the quote reads:

7 The exclusion of the limited partnership from the definition of  
 8 corporation is a departure from the former Bankruptcy Act.  
 9 Section 4 of the Act included a limited partnership, which was  
 10 therefore deemed a "corporation" within the meaning of the  
 11 statute. Under the Code, when personal liability co-exists with  
 12 capital liability, such body will not be deemed a corporation for  
 purposes of section 101(9). Thus, general partnerships are also  
 excluded, because the partners' liability extends beyond their  
 capital contribution.

13 2 COLLIER ON BANKRUPTCY ¶ 101.09, at 101-70. Collier goes on to discuss unincorporated  
 14 companies in the next paragraph without any discussion on limited liability like in its discussion  
 15 of partnerships. Therefore, the YAN's citation to Collier is neither informative nor useful unless  
 16 the entity in question is potentially a partnership, which the Debtor is not.

17 The First Circuit's analysis is markedly different from that of other Circuits where the  
 18 partnership/trust issue is absent, and, where, as here, there is no issue as to the existence of a trust  
 19 or partnership. Therefore, the Court should look to the tests developed by the other Circuits' as  
 20 the far more appropriate tests for identifying an unincorporated company.

## 21 **2. The Second, Third, and Seventh Circuits' Tests Form the Appropriate Test for** 22 **Determining Whether the Debtor Is an Unincorporated Company**

23 The Second Circuit and Seventh Circuit have proposed a test for determining whether an  
 24 entity is an unincorporated company as follows:

25 A company is defined in the Century Dictionary as "a number of  
 26 persons united for performing or carrying on anything jointly." If  
 27 such a number of persons are united for carrying on any kind of  
 28 business enterprise jointly, and are not incorporated, and do not  
 constitute a partnership, they are an "unincorporated company"



1 within the trust intent and meaning of the acts of Congress relating  
2 to bankruptcy.

3 *Nickolas v. Witter (In re Peer Manor Bldg. Corp.)*, 143 F.2d 769, 771 (7th Cir.1944) (quoting and  
4 citing *In re Tidewater Coal Exchange*, 280 F. 638, 643 (2d Cir.1922).

5 In applying this test to one case at hand, the Seventh Circuit noted certain indicia of an  
6 entity found to be an unincorporated company: (1) It carried on a business; (2) It held property  
7 and conducted all the business which the management of its property demanded; (3) It had debts;  
8 (4) Insurance was paid; (5) Taxes were paid; (6) It was a business conducted for profit, although  
9 the profits were largely imaginary; and (7) Agents of representatives of the company did the  
10 business. *In re Peer Manor Bldg. Corp.*, 143 F.2d at 772.

11 In another case, the Second Circuit in *In re Tidewater Coal Exchange*, took note that the  
12 debtor was engaged in a commercial enterprise, even though it was nothing more than a clearing  
13 house, that it did no trading, and that it was not designed to earn a profit for itself, but the Court  
14 still found that entity to be an unincorporated company. 280 F. at 643. To be an unincorporated  
15 company and eligible for bankruptcy, it sufficed that there was "an association of individuals in  
16 pursuit of a common business object, under a control agreed to by all its members, and capable of  
17 having debtors and creditors." *Id.*

18 The Third Circuit stated the test for an unincorporated company in much simpler terms:

19 Whatever may be the full scope of the word "company," it does  
20 include at least any unincorporated association or group of  
21 individuals whose object and purpose are either wholly or chiefly  
22 of the same kind as the object and purpose of a moneyed business,  
23 or commercial corporation. A corporation is also a group of  
24 individuals, and the fact that one group has a charter, while another  
25 group with an identical object has none, hardly furnishes a  
26 sufficient reason for exempting the latter from the scope of the  
27 [Bankruptcy] act. . . . In a word, if "any unincorporated company"  
28 includes at least a group of individuals doing "business" in the  
same sense as business when carried on by a corporation, then such  
a company is certainly subject to the [Bankruptcy] act.

26 *Vadakin v. Cass (In re Order of Sparta)*, 242 F. 235 (3d Cir.1917).

27 ///

Synthesizing these leading cases from the Second, Third, and Seventh Circuits, the test of whether an entity is an unincorporated company focuses on inquiries as to the existence of an enterprise of many people engaged in a common business, even where that business is not necessarily set up for profit or even profitable. These indicia of an unincorporated company are shared in the first four (4) points taken from the First Circuit analysis, but the last four (4) points of the First Circuit analysis are not present because there is no inquiry into whether the entities might be trusts or partnerships.

In this case, no party argues or asserts that the Santa Ysabel Resort and Casino is a partnership or a trust. Therefore, the analysis set forth by the First Circuit is not appropriate and the Court should look to the analysis set forth by Second, Third, and Seventh Circuits as the proper test for whether the Debtor is an unincorporated company.

**3. The Court Should Employ a Broad and Expansive Reading of Corporations and Unincorporated Companies**

In applying the test for an unincorporated company, the Court should do so with a broad and expansive reading of the terms “corporation” and unincorporated company.” A broad and expansive reading of the terms “corporation” and “unincorporated company” is necessary and appropriate so as to give effect to Congress’ intent to offer creditors and debtors bankruptcy protection (by way of voluntary as well as involuntary petitions) to most all businesses. *Nickolas v. Witter (In re Peer Manor Bldg. Corp.)*, 143 F.2d 769, 772 (7th Cir.1944). In addressing the definition of corporation under the Bankruptcy Act, “[n]umerous courts have considered what businesses are thus included. They have uniformly given a broad, inclusive construction to the language used.” *Id.* at 771. In *Witter*, the Seventh Circuit noted that one unincorporated business entity was not a corporation, was not a partnership, and was not an individual, but nonetheless had recourse to bankruptcy protection:

Congress seemingly intended to include all business enterprises within the reach of this Chapter [X of the Bankruptcy Act]. Congress was not satisfied with including corporations and partnerships. It added joint stock companies. Nor did it stop here. It included “unincorporated companies and associations.” We

1 think Congress intended to include all business enterprises which  
 2 were unable to meet their debts and whose creditors had more faith  
 in a reorganization than in a mortgage foreclosure.

3 *Id.* at 772.

4 Indeed, if Congress had sought to limit the availability of bankruptcy to businesses, it  
 5 would not have included the widely undefined and amorphous term “unincorporated company” in  
 6 the definition of corporation as an entity eligible for bankruptcy protection dating back to the  
 7 Bankruptcy Act of 1898 and all of its successor iterations through the current Bankruptcy Code of  
 8 1978.

9 The Second Circuit, too, gave a broad and expansive reading to “unincorporated  
 10 company” as applied to businesses and bringing them into the fold of entities eligible for  
 11 bankruptcy:

12 If each word in the phrase “any unincorporated company” is given  
 13 its ordinary and popular meaning, the [Debtor] is unquestionably  
 14 included therein; and considering the phrase as a whole and in the  
 15 light of the subject-matter of the [Bankruptcy] act, we can see no  
 16 reason for giving it a restricted meaning which would exclude it. It  
 17 is not a corporation, not having been incorporated at the time  
 18 involved. It is not a partnership, there being no agreement to  
 19 divide the profit and bear the loss. It is not a joint-stock company,  
 for there is no stock. It is simply an unincorporated company or  
 association engaged in the prosecution of a business enterprise, as  
 distinguished from one which is charitable, or religious, or  
 educational, or social.

20 *In re Tidewater Coal Exchange*, 280 F. 638, 643 (2d Cir.1922). Therefore, the Court should give  
 21 the term unincorporated company” as broad a reading as possible to extend bankruptcy protection  
 22 to as many businesses as possible, as intended by Congress.

23 **B. The Court Should Find that the Debtor Is an Unincorporated Company,**  
 24 **Eligible for Bankruptcy Protection, and Separate from the Lipay Nation**

25 Applying the test set forth by synthesizing the case law from the Second, Third, and  
 26 Seventh Circuits with a broad reading to give effect to Congress’ intent to protect businesses  
 27 under the auspices of the Bankruptcy Code, the Court should find that the Debtor is an  
 28

1 unincorporated company. An entity is an unincorporated company if there are many people  
2 engaged in a business under a common name, even where that business is not necessarily set up  
3 for profit or even profitable.

4 Here, the Debtor is an unincorporated company because it is a business of 120 employees  
5 comprised of management, mid-level management, its own accounting department, and service  
6 employees. These many people carry on a business in gaming operations and the running of a  
7 casino, and the money generated from the operation of the business is used to fund the business.  
8 The Debtor pays its payroll to its 120 employees from the funds generated from its own business  
9 operations at the casino and no other funds. The Debtor has its own tax ID number. The Debtor  
10 has its own contracts with vendors, its own insurance where it is the named insured, and it has its  
11 own debts owed to creditors.

12 Much like what happened prepetition, if San Diego County levies the Debtor's bank  
13 account, the Debtor cannot cut checks to pay its employees and vendors, and the Debtor's  
14 business will be severely hindered, if not shut down. If the YAN pull up to the Casino with a  
15 number of flat-bed trucks to foreclose on the personal property and gaming equipment at the  
16 Casino, the Debtor's business will shut down. There will be no business to operate, no funds will  
17 be generated, no employees will be paid, 120 people will lose their jobs, and they very real  
18 business of running and operating the Casino will be destroyed.

19 The Debtor is an unincorporated company according to certain criteria that the Seventh  
20 Circuit applied in its analysis. The Seventh Circuit noted certain indicia of an entity found to be  
21 an unincorporated company: (1) It carried on a business; (2) It held property and conducted all the  
22 business which the management of its property demanded; (3) It had debts; (4) Insurance was  
23 paid; (5) Taxes were paid; (6) It was a business conducted for profit, although the profits were  
24 largely imaginary; and (7) Agents or representatives of the company did the business. *Nickolas v.*  
25 *Witter (In re Peer Manor Bldg. Corp.)*, 143 F.2d 769, 771, 772 (7th Cir.1944). Here, the Debtor  
26 (i) carries on a business of operating a casino with 120 employees; (ii) the Debtor holds  
27 approximately \$1.5 million of personal property (as listed on schedule B of its Bankruptcy  
28



1 Schedules) without which it cannot carry on its business; (iii) the Debtor has debts owed to  
 2 dozens of creditors that are not co-debts of the Iipay Nation (compare schedules F and H of the  
 3 Debtor's Bankruptcy Schedules, showing only five debts where the Iipay Nation is a co-debtor) (a  
 4 true and correct copy of schedules F, G, and H of the Debtor's Bankruptcy Schedules are attached  
 5 as Exhibit "A" hereto); (iv) the Debtor pays for its own insurance, and the named insured is  
 6 "Santa Ysabel Resort & Casino" (see Exhibit "B" hereto); (v) the Debtor pays sales taxes to the  
 7 Iipay Nation, and the Debtor pays employee related taxes by way of its own tax ID number,  
 8 which is different from the Iipay Nation's tax ID number (see Exhibit "C" hereto); (vi) the Debtor  
 9 operates the casino for the purpose of making a profit, even though its recent cash flow breaks  
 10 even; and (vii) David Chelette and Charles Bauman, along with 120 employees, over half of  
 11 which are not members of the Iipay Nation, conduct the business at the casino. Therefore, the  
 12 Debtor is an unincorporated company under the analysis employed by the Seventh Circuit.

13       The Debtor is also an unincorporated company according to the analysis applied by the  
 14 Second Circuit in *In re Tidewater Coal Exchange*, 280 F. 638 (2d Cir.1922). An entity is an  
 15 unincorporated company where there is "an association of individuals in pursuit of a common  
 16 business object, under a control agreed to by all its members, and capable of having debtors and  
 17 creditors." *Id.* at 643. The Debtor has 120 employees in pursuit of the common business object  
 18 of running a casino, which provides sufficient revenue to pay its ordinary operating costs and  
 19 payroll, operating under a controlled structure with a hierarchy of management, middle  
 20 management, an accounting department, and a recognized decision-making structure through its  
 21 management. Additionally, it has its own debtors and creditors, specifically, it has contracted  
 22 with several entities in its own capacity, separate and apart from the Iipay Nation, as shown on  
 23 Schedule G of the Bankruptcy Schedules, and the Debtor has several trade creditors that are  
 24 creditors of the Debtor alone and not the Iipay Nation, as shown by reference to schedules F and  
 25 H of the Bankruptcy Schedules. Contracts between the Debtor (not the Iipay Nation), on the one  
 26 hand, and various third parties, on the other hand, are attached as Exhibit "D" hereto. Therefore,  
 27 the Debtor is an unincorporated company under the Second Circuit's analysis.

1 The Debtor does not need to be formally formed as a “legal entity” to be an  
 2 unincorporated company eligible for bankruptcy protection. The YAN in its Motion often uses  
 3 the phrase “separate legal entity,” without defining what a “legal entity” is, and implies that such  
 4 a formation is necessary to exist as a separate entity. However, no formal formation is necessary  
 5 to be adjudged an unincorporated company. The Third Circuit compared the situation of an  
 6 unincorporated company with that of a corporation and stated that “the fact that one group has a  
 7 charter, while another group with an identical object has none, hardly furnishes a sufficient reason  
 8 for exempting the latter from the scope of the [Bankruptcy] act.” *Vadakin v. Cass (In re Order of*  
 9 *Sparta)*, 242 F. 235, 238 (3d Cir.1917). The Third Circuit found the entity in question to be an  
 10 unincorporated company and eligible for bankruptcy. *Id.* Indeed, the very formal establishment  
 11 of a business entity by way of filing articles of incorporation would take it out of the realm of  
 12 unincorporated entities and would make this entire issue moot. Congress has made clear, as noted  
 13 by the Second, Third, and Seventh Circuits, that an unincorporated company is an eligible debtor  
 14 under the Bankruptcy Code and has been for over a hundred years.

15 The fact that Santa Ysabel Resort and Casino has filed d/b/a papers and has not  
 16 incorporated or taken other traditional steps for the formation of a corporation, LLC, or other  
 17 entity has no bearing on its eligibility as an unincorporated company. Whatever entities may or  
 18 may not be under state law, “it does not at all follow that under federal law they cannot be  
 19 properly adjudicated bankrupt as unincorporated companies.” *Gallagher v. Hannigan*, 5 F.2d  
 20 171, 174 (1st Cir.1925). Moreover, the Seventh Circuit found that a dissolved corporation that  
 21 continued to do business was an unincorporated company eligible for bankruptcy relief. *In re*  
 22 *Peer Manor Bldg. Corp.*, 143 F.2d at 772. The Debtor, which has held itself out as a business by  
 23 way of its name, its operations, its employees, payroll, contracts with creditors in its own name,  
 24 and debts with creditors in its own name, is an unincorporated company even without a “formal”  
 25 legal status under state (or tribal) law. Even a debtor that is organized for a fraudulent purpose  
 26 may be deemed an unincorporated company and eligible for bankruptcy, as the court found in  
 27 *Gallagher v. Hannigan*, where the debtor was classic Ponzi scheme. *Gallagher*, 5 F.2d at 174. If  
 28



1 a company formed for illegal business operations, a company that let its corporate status lapse,  
 2 and a company not properly formed under state law can be determined to be an unincorporated  
 3 company and eligible for bankruptcy, then certainly the Debtor, which carries on a legitimate  
 4 business with employees, vendors, contracts, and creditors, is an unincorporated company and  
 5 eligible for bankruptcy. Therefore, the Court should find that the Debtor is an unincorporated  
 6 company and eligible for bankruptcy.

7 It is of no consequence that the YAN thought it was dealing at all times with the Iipay  
 8 Nation and not the Santa Ysabel Resort and Casino as an unincorporated company. The fact that  
 9 an entity is known to a creditor in a capacity other than an unincorporated company "is no reason  
 10 for holding that bankruptcy may not be invoked in order to provide equality of treatment of all  
 11 creditors of this separate entity." *Id.* (finding that debtor was eligible to file bankruptcy as an  
 12 unincorporated company despite creditors' expectation that the debtor was a partnership or trust  
 13 that would be ineligible for bankruptcy).

14 It is also of no consequence that the prepetition litigation has been between the Iipay  
 15 Nation (rather than the Debtor), on the one hand, and the YAN or San Diego County, on the other  
 16 hand. The Third Circuit addressed this objection and dismissed it as being no bar to bankruptcy  
 17 eligibility for an unincorporated company:

18 Two minor objections may be briefly noticed. The first is that the  
 19 order [i.e., the Order of Sparta, the debtor] is not a legal entity, and  
 20 cannot be sued qua order. To this it is enough to answer that, as  
 21 Congress has permitted a suit in bankruptcy to be brought against  
 22 such a company, no reason is apparent why the proceeding should  
 not bring the company into court under its own name – of course  
 with notice to the proper officials.

23 *Vadakin v. Cass (In re Order of Sparta)*, 242 F. 235, 239 (3d Cir.1917). Thus, although the Order  
 24 of Sparta was not known to other parties to be an entity capable of being sued, and therefore not  
 25 sued, there was no reason to prevent it from being an unincorporated company and eligible for  
 26 bankruptcy. Here, though the YAN and San Diego County sued and litigated against the Iipay  
 27 Nation under non-bankruptcy law, that is no bar to the Debtor's eligibility for bankruptcy  
 28

1 protection as an unincorporated company under bankruptcy law. It is entirely two different  
 2 matters to be the subject of suit for breach of contract and to be a chapter 11 debtor. Therefore,  
 3 the Court should find that the Debtor is eligible for bankruptcy completely apart from the YAN's  
 4 prepetition litigation strategy, which had nothing to do with bankruptcy eligibility.

5 Similarly, it is inconsequential that the Debtor never asserted itself as an unincorporated  
 6 company in the prepetition litigation with the YAN, the County of San Diego, or any other  
 7 parties. Prepetition statements made by a debtor in a non-bankruptcy context have no bearing on  
 8 acknowledgment of eligibility or ineligibility for chapter 11. *In re Las Vegas Monorail Co.*, 429  
 9 B.R. 770, 790-91 (Bankr.D.Nev.2010) (stating that debtor's disclosure and description of itself as  
 10 "instrumentality of the State of Nevada" in its tax certificate was no evidence of it being an  
 11 "instrumentality" or "municipality" under the Bankruptcy Code because "it is critical to note that  
 12 [the debtor] did not make its representation in connection with an acknowledgment that it was  
 13 ineligible for Chapter 11"). Therefore, the various defenses that the Iipay Nation and its attorneys  
 14 made prior to the Debtor's bankruptcy filing, completely outside of the Bankruptcy Code, have no  
 15 bearing on the question of whether the Debtor is an unincorporated company under the  
 16 Bankruptcy Code.

#### 17 IV.

#### 18 **CONTRARY TO THE YAN'S ASSERTIONS, THE COURT SHOULD** 19 **FIND THAT THE DEBTOR AND THE IIPAY ARE SEPARATE ENTITIES**

20 The YAN is incorrect in its assertion that the Iipay Nation and the Debtor are the same  
 21 entity. The Debtor first reiterates the differences between the Iipay Nation and the Debtor, and  
 22 then refutes the YAN's allegations in turn. The Court should find that the Debtor and the Iipay  
 23 Nation are two separate entities and that the Debtor is an unincorporated company eligible for  
 24 bankruptcy protection.

#### 25 **A. The Santa Ysabel Resort and Casino Is Not the Iipay Nation**

26 The Iipay Nation is a federally recognized Indian tribe, comprised of approximately 918  
 27 enrolled tribal members. The Iipay Nation occupies the Santa Ysabel Indian Reservation,  
 28

1 consisting of 15,500 acres of Indian reservation land. The Iipay Nation has a tribal government  
2 with a tribal council and chairman that see to its government functions. The Iipay Nation pays its  
3 tribal government employees, and it has its own tax ID number (953215892) separate from the  
4 Debtor and its tax ID number.

5 Wholly owned, but separate and apart from the Iipay Nation, the Debtor operates a casino  
6 gaming business. The Debtor has 120 employees, approximately half of which are tribal  
7 members of the Iipay Nation and half which are not. The Santa Ysabel Resort and Casino is not a  
8 federally recognized Indian tribe. The Santa Ysabel Resort and Casino owns no land and has no  
9 tribal government. The Santa Ysabel Resort and Casino maintains insurance in its own name,  
10 enters into contracts in its own name, and generates revenue to pay its operating expenses and 120  
11 employees. The Debtor pays sales taxes to the Iipay Nation. Furthermore, the Debtor has entered  
12 into loan agreements with the Iipay Nation, recognizing one as lender and the other as borrower  
13 and as two separate entities (see Exhibit "E" hereto). If the YAN and San Diego County  
14 foreclose on the casino and the Debtor's accounts, the Iipay Nation is not shut down – the Debtor  
15 is.

16 Case law supplies us with examples treating businesses associated with Indian tribes as  
17 entities that are related to the tribe but are not the tribe itself. *Cabazon Indian Casino v. IRS (In*  
18 *re Cabazon Indian Casino)*, 57 B.R. 398 (9th Cir.B.A.P.1986), involved an Indian casino that was  
19 an unincorporated company (which was the chapter 11 debtor in the case), and it was owned by  
20 the Cabazon Band of Mission Indians. *Id.* at 399. Additionally, *Breakthrough Management*  
21 *Group v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173 (10th Cir.2010), involved an Indian  
22 casino that was a "subordinate economic entity" and an "unincorporated entity" created by and  
23 wholly owned by the Indian tribe but no the tribe itself. *Id.* at 1180. The Tenth Circuit did not  
24 conclude that the casino and tribe were one in the same but instead concluded that "the Casino  
25 [has] a sufficiently close relationship to the Tribe to share in its [sovereign] immunity." *Id.* at  
26 1181. Therefore, there is federal precedent to find an Indian casino to be an unincorporated  
27 company with an identity separate from the tribe itself.  
28

**B. The Loan Documents Are No Bar to the Finding of the Debtor as an Unincorporated Company Separate from the Iipay Nation**

The loan documents' reference to the Iipay Nation do not answer the question of whether the Debtor is an unincorporated company. Prepetition statements made by a debtor in a non-bankruptcy context have no bearing on acknowledgment of eligibility or ineligibility for chapter 11. *In re Las Vegas Monorail Co.*, 429 B.R. 770, 790-91 (Bankr.D.Nev.2010) (stating that debtor's disclosure and description of itself as "instrumentality of the State of Nevada" in its tax certificate was no evidence of it being an "instrumentality" or "municipality" under the Bankruptcy Code because "it is critical to note that [the debtor] did not make its representation in connection with an acknowledgment that it was ineligible for Chapter 11").

Nor would the Iipay Nation's or Debtor's alleged violation of the terms of the loan documents be a bar to finding the Debtor to be a separate entity and unincorporated company. The Seventh Circuit found that a dissolved corporation that continued to do business was an unincorporated company eligible for bankruptcy relief. *Nickolas v. Witter (In re Peer Manor Bldg. Corp.)*, 143 F.2d 769, 771, 772 (7th Cir.1944). Even a company engaged in no other business but an illicit Ponzi scheme can still be adjudicated an unincorporated company and eligible for bankruptcy. *Gallagher v. Hannigan*, 5 F.2d 171, 174 (1st Cir.1925).

The YAN point to the Amended and Restated Loan Agreement (the "Loan Agreement") to prove that the Debtor does not exist as an unincorporated company and that the Iipay Nation is the only entity in existence. However, the Loan Agreement is dated as of April 22, 2005, approximately two years before the Debtor opened for business. Conducting business is a key component of being an unincorporated company. In the case of *Chicago Title & Trust Co. v. Ryan (In re Midwest Athletic Club)*, 161 F.2d 1005 (7th Cir.1947), the Seventh Circuit compared its case at hand with its prior ruling in *In re Peer Manor Building Corp.*, 143 F.2d 769 (7th Cir.1944), and noted that both entities were dissolved companies, but that the debtor in *Peer Manor* was an unincorporated company eligible for bankruptcy relief because it carried on an active business, and the debtor in *Midwest Athletic Club* was not an unincorporated company (and



1 thus not eligible for bankruptcy protection) because it carried on no business at all after its  
2 dissolution. *In re Midwest Athletic Club*, 161 F.2d at 1007-08. Because the proper test for an  
3 unincorporated company is a multiplicity of people carrying on a business under a common  
4 identity, the Debtor could not exist as an unincorporated company in 2005 when it was not open  
5 for business, and thus the Loan Agreement is of little value in the inquiry as to an unincorporated  
6 company.

7 Even if the Loan Agreement were of use in this inquiry, the Loan Agreement indicates the  
8 separate existence of the Debtor from the Iipay Nation in several places. To start, the Debtor is  
9 recognized by name: “‘Casino’ means, collectively, all gaming and related retail, lodging, dining  
10 and entertainment facilities owned or operated by Borrower or any Affiliate of Borrower,  
11 including but not limited to the facility commonly referenced or to be known as the Santa Ysabel  
12 Resort and Casino, and any replacements, improvements or expansions thereof.” Loan  
13 Agreement p.4. Not only does this definition recognize the Casino, but it also recognizes that it  
14 could be operated by an affiliate of the Iipay Nation. The defined terms “Casino Assets” and  
15 “Casino Operations” also recognize operations conducted by an affiliate of the Iipay Nation.  
16 Loan Agreement p.4. In turn, “‘Affiliate’ of any Person means any other Person directly or  
17 indirectly controlling, controlled by or under common control with such Person.” Loan  
18 Agreement p.1. The defined term “Person” is defined very broadly to mean, amongst others,  
19 “corporation . . . association, enterprise, tribe, trust or other entity or organization.” Loan  
20 Agreement p.15. With such a broad definition, inclusive of the catch-all “or other entity or  
21 organization,” the Debtor would be Person, and by common control, an Affiliate, and recognized  
22 under the Loan Agreement, and named “Santa Ysabel Resort and Casino,” in connection with the  
23 operation of the Casino.

24 The Loan Agreement suggests the Iipay Nation and the Debtor would or could be separate  
25 entities in several other places, as well. The defined term “‘Excluded Assets’ means any Cash,  
26 Cash Equivalents, or Property of Borrower [Iipay Nation] that is not Casino Assets.” Loan  
27 Agreement p.7. And “‘Net Income’ means . . . the net income of Borrower [Iipay Nation] from  
28

Casino Operations . . .” Loan Agreement p.12. These definitions focus on the Casino apart from the tribe and suggest a division between the Debtor and the Iipay Nation. Similarly, “Operating Lease Obligations” refers to “lease payments due under all Operating Leases of Borrower [Iipay Nation] or the Casino Operations.” Loan Agreement p.13. If the Iipay Nation and the Debtor are one and the same in operating the Casino, then there is no reason for the Loan Agreement to refer separately to the lease obligations of both “Borrower or the Casino Operations.”

If the Loan Agreement is to be considered in answering the bankruptcy law question of whether a separate unincorporated company exists in the Debtor, then it is most important to look at the provisions speaking to secured claims, liens, bankruptcy, and insolvency, all of which reference the existence of the Debtor as separate from the Iipay Nation. Sections 4.01(a)(iv) and (v) of the Loan Agreement state:

(a) Borrower [Iipay Nation] shall have delivered each of the flowing items to Agent for approval, and Agent shall have approved each item:

\*\*\*

(iv) UCC lien searches covering the name of the Borrower, the Casino, and Guarantor, reflecting no Liens or encumbrances of Casino Assets, other than Permitted Encumbrances, with the Bring Down Certificate.

(v) Searches evidencing no bankruptcies, tax Liens or judgments relating to Borrower, any Affiliate of Borrower or the Casino, or the Guarantor, with Bring Down Certificate.

Loan Agreement p.30 (emphasis added). With respect to liens, secured claims, and bankruptcy filings, the Loan Agreement recognizes the possible separate existence of the Casino from the Borrower, as well as its affiliates, otherwise there is no reason to use any defined term other than “Borrower” because, as the YAN have tried to assert, there would be no separate legal entity apart from Borrower [Iipay Nation]. Yet, this section specifically separates the Borrower [Iipay Nation] from the Casino, which is defined “to be known as the Santa Ysabel Resort and Casino.”



Moreover, Section 5.18 of the Loan Agreement, addressing solvency, again speaks to two separate entities in the Iipay Nation and the separate Santa Ysabel Resort and Casino:

(a) . . . (i) the fair value of the assets of Borrower and the Casino on a consolidated basis, at a fair valuation, will exceed the debts and liabilities, subordinated, contingent or otherwise, of Borrower and the Casino on a consolidated basis; (ii) the present fair saleable value of the Property of Borrower and the Casino on a consolidated basis will be greater than the amount that will be required to pay the probable liability of Borrower and the Casino on a consolidated basis on their debts and other liabilities, subordinate, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) Borrower and the Casino on a consolidated basis will be able to pay their debts and liabilities, subordinated, continent or otherwise, as such debts and liabilities become absolute and matured; and (iv) Borrower and the Casino on a consolidated basis will not have unreasonably small capital with which to conduct the business in which they are engaged as such businesses are now conducted and are proposed to be conducted after the date hereof.

(b) Borrower does not intend to, and does not believe that it or the Casino will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or the Casino and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of Borrower or the Casino Operations.

Loan Agreement p.46 (emphasis added). Section 5.18(a) speaks to the assets, liabilities, and solvency the Borrower and the Casino as separate entities and requires that such calculations be made on a consolidated basis. If the Borrower and the Casino (i.e, the Iipay Nation and the Debtor) were the same entity, there would be no need to specify that the calculations be done on a consolidated basis. Moreover, there would be no reference both the Borrower and the Casino, as reference to the Borrower alone would encompass both and suffice. Additionally, Section 5.18(b) speaks to the separate indebtedness of multiple entities – the indebtedness of the Casino, the indebtedness of the Borrower, and the indebtedness of the Casino Operations. Therefore, to the extent that the Loan Agreement can be used to show the existence of an unincorporated company

///

1 separate from the Iipay Nation, the provisions regarding bankruptcy, solvency, secured claims,  
2 and liens show that multiple entities exist.

3 Contrary to the YAN's contentions, it would not be a violation of the Loan Agreement for  
4 the Iipay Nation to conduct its business through the Debtor, which it wholly owns. Section 6.17  
5 specifically carves out an exception to allow the Iipay Nation to enter into transactions with  
6 Affiliates involving casino assets in the ordinary course of business. Loan Agreement p.53.  
7 Given the definition of Affiliate as used in the Loan Agreement, the Debtor would be an affiliate  
8 of the Iipay Nation, and the conduct of the Debtor's business is absolutely within the ordinary  
9 course. The existence of an unincorporated company being determined by reference to many  
10 people carrying on a business under a common name, neither the Iipay Nation nor the Debtor  
11 violated any terms by conducting business in the ordinary course through an unincorporated  
12 company. Furthermore, the YAN cannot forbid the Iipay Nation from operating and managing  
13 the gaming operations through the Debtor (which is wholly owned by the Iipay Nation) because  
14 section 15.04 of the Loan Agreement states in all-capital lettering: "NOTWITHSTANDING  
15 ANY OTHER POSSIBLE CONSTRUCTION OF ANY PROVISION HEREIN, AGENT AND  
16 LENDERS [THE YAN] ACKNOWLEDGE AND AGREE THAT THE LOAN DOCUMENTS  
17 DO NO CREATE . . . (B) ANY RIGHTS ON THE PART OF AGENT AND LENDERS [THE  
18 YAN] TO INTERFERE WITH BORROWER'S RIGHT TO DETERMINE STANDARDS OF  
19 OPERATION AND EFFICIENT MANAGEMENT OF THE CASINO . . ." Loan Agreement  
20 p.75. The Iipay Nation and the Debtor are not violating the Loan Agreement by the Debtor's  
21 existence as an unincorporated company conducting business at the Casino, and the YAN has no  
22 power under the Loan Agreement to forbid it.

23 Section 6.27 of the Loan Agreement, stating that the Iipay Nation operates the Casino as a  
24 "tribal enterprise," which has no separate legal existence," is no bar to finding the Debtor as an  
25 unincorporated company because it was not made in connection with the existence of an  
26 unincorporated company or eligibility for bankruptcy protection. Prepetition statements made by  
27 a debtor in a non-bankruptcy context have no bearing on acknowledgment of eligibility or  
28

ineligibility for chapter 11. *In re Las Vegas Monorail Co.*, 429 B.R. 770, 790-91 (Bankr.D.Nev.2010) (stating that debtor's disclosure and description of itself as "instrumentality of the State of Nevada" in its tax certificate was no evidence of it being an "instrumentality" or "municipality" under the Bankruptcy Code because "it is critical to note that [the debtor] did not make its representation in connection with an acknowledgment that it was ineligible for Chapter 11"). The representation that "Borrower currently operates the Casino as a 'tribal enterprise,' which has no separate legal existence from Borrower," which the Debtor made in connection with securing financing in a non-bankruptcy context is exactly the same sort of non-bankruptcy, pre-bankruptcy representation made by the debtor in *In re Las Vegas Monorail Company* in connection with securing bond financing, and which the court in that case found to be completely useless in answering the question of what sort of entity the debtor might be and whether it is eligible for bankruptcy.

Moreover, a word or phrase used in one legal context does not have the same meaning and trappings of the same word in another legal context, especially in the realm of bankruptcy law. *Id.* at 790 (noting the Bankruptcy Code's differing use and meaning of words such as "tax" and "lease" and "security interest" and "instrumentality" when compared with other areas of state and federal law). Thus, "tribal enterprise" may be an unincorporated company under the Bankruptcy Code if it fits the test synthesized by the Circuit Courts as shown above. Therefore, these statements outside of the bankruptcy context have little to no bearing on whether the Debtor is a separate entity as an unincorporated company under the Bankruptcy Code.

Despite the overcomplicated test it developed, even the First Circuit noted that "courts have not attempted to give any comprehensive definition of 'unincorporated company' but have inclined to decide each case on its facts as it arose." *Pope & Cottle Co. v. Fairbanks Realty Trust*, 124 F.2d 132, 134 (1941) (emphasis added). As case law has borne out, an unincorporated company exists where multiple people carry on a common business under a common name – here, the 120 employees conducting a gaming business as the Santa Ysabel Resort and Casino.

///

1 No papered statement can undo those facts. The Court should find that, under the Bankruptcy  
2 Code, the Debtor is an unincorporated company with a separate existence from the Iipay Nation.

3 **C. The Debtor Is an Unincorporated Company Separate from the Iipay Nation**  
4 **Without Any Violation of Federal, State, or Tribal Law**

5 The Court should find that the Debtor's separate existence as an unincorporated company  
6 is not barred merely by reference to prepetition documents, much less ones entered into prior to  
7 the Debtor commencing business. Conducting business is a key component of being an  
8 unincorporated company. See *Chicago Title & Trust Co. v. Ryan (In re Midwest Athletic Club)*,  
9 161 F.2d 1005, 1007-08 (7th Cir.1947) (comparing two dissolved companies and finding the one  
10 that continued to conduct a business was an unincorporated company eligible for bankruptcy  
11 protection while the other conducted no business and thus was not an unincorporated company  
12 and, consequently, not eligible for bankruptcy protection). The Tribal-State Compact was entered  
13 in December 2003 and the Intergovernmental Agreement with the County of San Diego was  
14 entered in January 2005, long before the Debtor commenced business operations. The proper test  
15 for an unincorporated company being a multiplicity of people carrying on a business under a  
16 common identity, certainly the Debtor could not exist as an unincorporated company in 2003 and  
17 2005 when it was not open for business. Furthermore, to the extent the Debtor or Iipay Nation  
18 were in violation of these state and county agreements (which is for the sake of argument and  
19 which neither the Debtor nor the Iipay Nation admit), that has no bearing on the existence of an  
20 unincorporated company separate from the Iipay Nation. Even a company engaged in no other  
21 business but an illicit Ponzi scheme can still be adjudicated an unincorporated company and  
22 eligible for bankruptcy. *Gallagher v. Hannigan*, 5 F.2d 171, 174 (1st Cir.1925). Therefore,  
23 reference to these state and county agreements has no place in determining the existence of the  
24 Debtor as an unincorporated company separate from the Iipay Nation.

25 The YAN is incorrect in its contention that, by reference to the Indian Gaming Regulatory  
26 Act ("IGRA"), the Debtor and the Iipay Nation must be one single entity. The Debtor and the  
27 Iipay Nation are not in violation of IGRA simply because the Debtor is an unincorporated  
28



1 company under the Bankruptcy Code and thus a separate entity (though wholly owned entity)  
2 involved in the operation of the Casino. Indian tribes can conduct gaming operations through their  
3 business entities. The cases cited by the YAN for its contention that the Debtor and Iipay Nation  
4 have violated IGRA, actually address IGRA violations by third party lenders that were wholly  
5 outside of the Indian tribe structure because their financial loan documents and contracts were so  
6 onerous as to rise to the level of unauthorized management contracts in violation of IGRA.

7 It is permissible for an Indian tribe to operate its casino through its affiliated entity. For  
8 example, the Lac du Flambeau Band of Lake Superior Chippewa Indians formed Lake of the  
9 Torches as a corporation chartered under tribal law to own and operate the Lake of the Torches  
10 Resort Casino, and the tribe entered into a state compact with Wisconsin and received approval  
11 from the National Indian Gaming Commission. *Wells Fargo Bank, N.A. v. Lake of the Torches*  
12 *Economic Development Corp.*, 658 F.3d 684, 688 (7th Cir.2011). That case, held a financing  
13 agreement by Wells Fargo to be completely void because its controls over the tribe's gaming  
14 operations in the event of default were so severe as to rise to the level of a management contract  
15 impermissible under IGRA. *See id.* at 698-99. This is hardly the case before this Court, where  
16 the Debtor's management answers to the chairman of the Iipay Nation, and the chairman sets the  
17 manager's salary and has the power to hire and fire him. Another example comes from  
18 *Breakthrough Management Group v. Chukchansi Gold Casino and Resort*, 629 F.3d 1173 (10th  
19 Cir.2010), where the Picayune Rancheria of the Chukchansi Indians set up the Chukchansi  
20 Economic Development Authority to own and operate the Chukchansi Gold Resort & Casino, and  
21 the Tenth Circuit noted that these were "subordinate economic entities" to the tribe and closely  
22 related to the tribe, though not the tribe itself. *See id.* at 1195; *see also Allen v. Gold Country*  
23 *Casino*, 464 F.3d 1044, 1045 (9th Cir.2006) ("Gold Country Casino is a tribal entity formed by a  
24 compact between the federally recognized Tyme Maidu Tribe and the State of California. The  
25 Casino is wholly owned and operated by the Tribe."). The Debtor's and Iipay Nation's structure  
26 regarding the Casino is not a violation of IGRA. Regardless, though, whether there is any  
27 violation of IGRA, which the Debtor would dispute strongly, that is not an issue to be decided by  
28

1 the Bankruptcy Court, much less in the Motion on the issue of dismissal. It has no bearing on the  
2 test of an unincorporated company.

3 Furthermore, the YAN's reliance on communications between the National Indian  
4 Gaming Commission ("NIGC") and Iipay Nation is misplaced, as those communications do not  
5 disprove the Debtor's separate existence. The YAN cite to a letter from the NIGC referring to the  
6 Iipay Nation's "gaming employees" in paragraph 20 of the letter to assert that the Iipay Nation  
7 alone owns and operates the gaming operations without the Debtor, but the NIGC also refers to  
8 "employees of the Santa Ysabel Resort and Casino" specifically in paragraph 24 of the same  
9 letter. Exhibit 16 to Bibbero Declaration. Additionally, it would not necessarily be a violation of  
10 IGRA for the Iipay Nation to operate through its wholly owned unincorporated company in the  
11 Debtor pursuant to 25 C.F.R. § 502.10.<sup>1</sup> That section provides, in pertinent part, that "[a] gaming  
12 operation may be operated by a tribe directly; by a management contractor; or, under certain  
13 conditions, by another person or other entity." There is nothing to say that the situation between  
14 the Debtor and the Iipay Nation would not fit into this third category.

15 It is consistent that the Debtor is a separate entity as an unincorporated company and that  
16 "[t]he Iipay Nation of Santa Ysabel owns and operates the Santa Ysabel Resort and Casino," as  
17 stated in the Iipay Nation of Santa Ysabel Gaming Ordinance. Exhibit 7 p.1 to Bibbero  
18 Declaration. All along the Debtor has stated that it is wholly owned by the Iipay Nation and that  
19 it operates the Casino. Furthermore, it is consistent that "the Casino shall be operated as an  
20 enterprise of the Tribe" and be an unincorporated company where it is named the "Santa Ysabel  
21 Resort and Casino." See Exhibit 11 to Bibbero Declaration, General Council Resolution 05-13.  
22 The Santa Ysabel Resort and Casino is a business enterprise wholly owned by the Iipay Nation in  
23 the form of an unincorporated company carrying on that business with a multiplicity of people  
24 under its name. They logically exist together and are not mutually exclusive. Entities are often  
25 referred to by one name under state law but are deemed to be other entities when tested by the

---

26  
27 <sup>1</sup> For ease of reference, the YAN's Motion, at p.12 ln.3, transposed two numbers in citing to "25  
28 C.F.R. § 520.10" to define "gaming operation." The correct cite is 25 C.F.R. § 502.10.



1 Bankruptcy Code. For example, the court in *In re Las Vegas Monorail Co.*, 429 B.R. 770  
2 (Bankr.D.Nev.2010), found that the debtor in that case was not an “instrumentality” or  
3 “municipality” under the Bankruptcy Code even though that debtor named and described itself as  
4 an “instrumentality of the State of Nevada” in its tax certificate because “it is critical to note that  
5 [the debtor] did not make its representation in connection with an acknowledgment that it was  
6 ineligible for Chapter 11.” *Id.* at 790-91. Another example comes from *Gallagher v. Hannigan*,  
7 5 F.2d 171 (1st Cir.1925), where the court found an entity formed as a Massachusetts trust to be  
8 an unincorporated company when examined through the lens of the Bankruptcy Act. *Id.* at 172-  
9 73. Therefore, the Court should find that the Debtor is an unincorporated company despite  
10 prepetition references to a tribal enterprise and, furthermore, find this to be logically consistent  
11 and not mutually exclusive.

12 The Iipay Nation’s Gaming Ordinance focuses on regulation of the gaming activity by  
13 establishing the Santa Ysabel Gaming Commission, and most of the document addresses the  
14 Commission’s existence, gaming, and licensing. See Exhibit 9 to Bibbero Declaration. It would  
15 not address the Debtor’s separate existence from the Iipay Nation as an unincorporated company  
16 and therefore has no bearing on the issue. Moreover, the General Council Resolution #07-31 of  
17 the Iipay Nation does not direct the Iipay Nation’s employees to carry out the operation of the  
18 Casino, as the YAN represent, but that the Tribal Council and officials and employees of the  
19 Tribe are directed “to take the necessary actions to carry out the directives of the General Council  
20 to obtain the benefits of Class III gaming through the construction and operation of the Casino.”  
21 Exhibit 10 to Bibbero Declaration p.2, at 2<sup>nd</sup> ¶. The General Council directed the Iipay Nation’s  
22 officials and employees to facilitate the constructing and operation of the Casino, not to conduct  
23 the Casino operations themselves.

24 Regardless, as discussed further below, the NIGC is listed in the Debtor’s bankruptcy case  
25 for notice purposes and has received notice of the bankruptcy petition. Neither the Debtor nor the  
26 Iipay Nation has been contacted by the NIGC with any allegation that the Debtor or Iipay Nation  
27 has violated IGRA by way of the bankruptcy filing or the Debtor’s independent existence as an  
28

1 unincorporated company.

2 The Court, though, should not consider alleged violations of IGRA in determining that the  
3 Debtor is an unincorporated company under the Bankruptcy Code. Compliance with IGRA, or  
4 any other law, is not part of the analysis as to whether an entity is an unincorporated company.  
5 Even a debtor that is organized for a fraudulent purpose may be deemed an unincorporated  
6 company and eligible for bankruptcy, as the court found in *Gallagher v. Hannigan*, where the  
7 debtor was a classic Ponzi scheme. *Gallagher*, 5 F.2d at 174. Therefore, the Court should find  
8 that the Debtor is an unincorporated company, a separate entity, and eligible for bankruptcy  
9 protection, irrespective of alleged IGRA violations.

10 **D. Other Actions of the Debtor, the Debtor's Proposed Bankruptcy Counsel, and the**  
11 **Iipay Nation Do Not Bar the Finding of an Unincorporated Company**

12 The various other documents that the YAN alludes to are of no avail in its attempt to  
13 refute the separate existence of the Debtor from the Iipay Nation. The financial report attached as  
14 Exhibit 1 to the Kwait Declaration does just the opposite. The financial report from McGladrey  
15 & Pullen, CPA, refers to the Santa Ysabel Resort and Casino as an enterprise fund of the Iipay  
16 Nation, and the report specifically analyzes the assets and liabilities of the Santa Ysabel Resort  
17 and Casino and specifically does not analyze the assets and liabilities of the Iipay Nation. Exhibit  
18 1 to Kwait Declaration p.1 ("the financial statements present only the Santa Ysabel Resort and  
19 Casino, and do not purport to, and do not, present fairly the financial position of the Iipay  
20 Nation"). Separate assets and liabilities and financial reports strongly evidence a business, in the  
21 form of the Santa Ysabel Resort and Casino, separate and apart from the Iipay Nation, as this  
22 independent auditor analyzed the financials by separating out the Casino's assets and liabilities  
23 from the tribe's. Moreover, the auditor acknowledges a separate entity by reference to the Debtor  
24 as "an enterprise fund of the Iipay Nation of Santa Ysabel." While this may have been  
25 insignificant in a pre-bankruptcy, non-bankruptcy context, under bankruptcy law, this fits  
26 squarely into a finding of an unincorporated company – a common business conducted by over  
27 100 people under a common name. Therefore, the Court should find that, under bankruptcy law,  
28

1 there has been and is a separate entity in the Debtor as an unincorporated company.

2       The Court should find that the legal opinion letters attached as Exhibits 3, 4, and 5 and the  
3 Tribal Business Structure Handbook attached as Exhibit 15 to the Bibbero Declaration are no  
4 evidence in support of the YAN's assertion of the Debtor's non-existence as an unincorporated  
5 company apart from the Iipay Nation and ineligible for bankruptcy protection. The meanings,  
6 analysis, and representation as to certain words and phrases made in one context, particularly in  
7 the non-bankruptcy context, have no prejudice on determining the same words and phrases in the  
8 bankruptcy context. *See In re Las Vegas Monorail Co.*, 429 B.R. 770, 789-91  
9 (Bankr.D.Nev.2010) (stating that "the Supreme Court has rejected [creditor's] basic premise –  
10 that a word used in one federal statute necessarily has the same meaning in another federal  
11 statute," and finding that debtor's admission of being an "instrumentality of the state" prepetition  
12 had no bearing on whether it was an "instrumentality" or "municipality" under the Bankruptcy  
13 Code because the debtor "did not make its representation in connection with an acknowledgement  
14 that it was ineligible for Chapter 11" but rather "in connection with its efforts to ensure that  
15 interest on the Bonds would be free from federal taxation."). Much like the debtor's statements in  
16 *Las Vegas Monorail Company*, the legal opinion letters were written as part of securing financing  
17 and without reference to bankruptcy eligibility. Likewise, the Tribal Business Structure  
18 Handbook does not discuss bankruptcy law, bankruptcy eligibility, or unincorporated companies  
19 under bankruptcy law in any fashion, focusing instead mainly on sovereign immunity, taxation,  
20 and financing for various forms of potential organizational structures. Therefore, it is of no  
21 guidance on the issue of the Debtor as an unincorporated company under the Bankruptcy Code.

22       The filing of the d/b/a papers does not bear upon the existence of an unincorporated  
23 company, as shown by the case law developed by the Circuit Courts and explained above. Thus,  
24 the YAN's citation to cases dealing with sole proprietorships with d/b/a's are inapplicable,  
25 uninformative, and should be disregarded because the facts involving sole proprietorships are so  
26 markedly different from those with unincorporated companies. *In re Lewis*, 461 B.R. 414  
27 (Bankr.E.D.Ky.2011), discusses whether an entity is a sole proprietorship or a partnership under  
28

1 Kentucky state law, then discusses the effect of preferential transfers and liens. It has no bearing  
 2 on unincorporated companies, bankruptcy eligibility, or dismissal. Similarly, *In re Christenberry*,  
 3 336 B.R. 353 (Bankr.E.D.Tenn.2005), merely discusses a hapless *pro se* debtor's misguided  
 4 bankruptcy filing for her sole proprietorship with herself as an alleged joint debtor, eventually  
 5 leading to conversion to chapter 7 in her individual capacity by reference to Tennessee state law  
 6 based on the law that a sole proprietorship is not an eligible entity for bankruptcy, though the  
 7 underlying individual is.

8 The YAN ignore the reality that, where a business is operating as an unincorporated  
 9 company, it is in essence doing business as the name it holds out to the world without having  
 10 incorporated under that particular name by way of filing articles of incorporation or forming a  
 11 charter. "[T]he fact that one group has a charter, while another group with an identical object has  
 12 none, hardly furnishes a sufficient reason for exempting the latter from the scope of the  
 13 [Bankruptcy] act." *Vadakin v. Cass (In re Order of Sparta)*, 242 F. 235, 238 (3d Cir.1917).  
 14 Whether the Debtor has a d/b/a filing or not, has articles of incorporation or not, or has a charter  
 15 or not, is not part of the analysis of whether the unincorporated company exists:

16 Congress seemingly intended to include all business enterprises  
 17 within the reach of this Chapter [X of the Bankruptcy Act].  
 18 Congress was not satisfied with including corporations and  
 19 partnerships. It added joint stock companies. Nor did it stop here.  
 20 It included "unincorporated companies and associations." We  
 21 think Congress intended to include all business enterprises which  
 22 were unable to meet their debts and whose creditors had more faith  
 23 in a reorganization than in a mortgage foreclosure.

22 *Nickolas v. Witter (In re Peer Manor Bldg. Corp.)*, 143 F.2d 769, 771, 772 (7th Cir.1944).  
 23 Therefore, the Court should find that this Debtor – which is a business of 120 people – is not a  
 24 sole proprietorship with a d/b/a, but an unincorporated company eligible for bankruptcy  
 25 protection.

26 The Debtor's proposed counsel, Levene, Neale, Bender, Yoo & Brill L.L.P. ("LNBYB"),  
 27 explained at great length in its reply to oppositions on the *Debtor's Application to Employ Levene*,  
 28



1 *Neale, Bender, Yoo & Brill L.L.P. as General Bankruptcy Counsel* that LNBYB was always  
2 intended to be counsel for the Debtor, not the Iipay Nation. Those arguments do not bear  
3 repeating again here. Additionally, as suggested and instructed by the Court, LNBYB will be  
4 filing an amended retainer agreement to clarify that it is employed by the Debtor, not the Iipay  
5 Nation.

6 There is no merit in the YAN's conjecture and presumption that LNBYB considered the  
7 Iipay Nation and the Santa Ysabel Resort and Casino to be the same entity, and, as such, only  
8 conducted searches for liens under the name of the Iipay Nation. In fact, prior to the bankruptcy  
9 filing, LNBYB conducted a UCC search under the name "Santa Ysabel Resort Casino." A true  
10 and correct copy of the search, dated June 21, 2012, is attached as Exhibit "\_\_\_\_\_" hereto.  
11 However, because this search turned up only one recorded lien by Sysco San Diego (a food and  
12 catering vendor and creditor of the Debtor), which lien the Debtor disputes (though the amount of  
13 the debt is undisputed), it seemed too self-serving for the Debtor to attach this UCC search to its  
14 first-day pleadings and argue that only Sysco had an alleged lien. Knowing that the YAN had  
15 filed a UCC shortly before the petition date, and knowing that the YAN would be a contentious  
16 party, the Debtor and LNBYB determined that it should attach the UCC searches that reflected  
17 the YAN's recording. Attaching the UCC search for the name "Santa Ysabel Resort Casino"  
18 seemed unnecessary because Sysco's filing already appeared on the UCC search for the name  
19 "Santa Ysabel Band of Diegueno Mission Indians." If the UCC search under the name of the  
20 Santa Ysabel Resort Casino had turned up more than one baseless UCC-1 filing, or a filing that  
21 was not covered by the other UCC searches, then the Debtor and LNBYB would have attached  
22 the Santa Ysabel Resort Casino UCC search result, too.

23 ///

24 ///

25 ///

26 ///

27 ///

## V.

## THE DEBTOR HAS PROPER AUTHORITY

## TO FILE BANKRUPTCY AND BE A DEBTOR IN POSSESSION

## A. The Debtor Has Proper Authority for Its Bankruptcy Filing

The Debtor has proper authority for the filing of its bankruptcy petition. Prior to the Debtor's bankruptcy filing, the Iipay Nation's chairman, Virgil Perez, met with the Iipay Nation's legislators and General Council and discussed the filing of the Debtor's bankruptcy. The Chairman and the legislators consulted with the Iipay Nation's general counsel, Huggy Lamar Price, Esq. regarding the decision to file the Debtor's bankruptcy case. The General Council and legislators supported the decision and authorized the Chairman to commence the Debtor's bankruptcy case by signing the resolution to authorize the filing.

It is the Iipay Nation's tradition for the Chairman to make major, high-end business decisions regarding the Debtor, such as whether to file for bankruptcy. In keeping with that tradition, the Iipay Nation's legislators, Chairman, and general counsel determined that no resolution of the legislative branch or General Council would be needed to authorize the bankruptcy filing. Therefore, the Debtor's bankruptcy filing has proper authorization. After the bankruptcy filing, the Chairman and legislators discussed the bankruptcy filing with the General Council at a regularly scheduled Tribal Council meeting, there was no opposition, and the Tribal Council showed general support.

Even if the Debtor's authorization were technically deficient, the Court should find that it is no reason to dismiss the case because the Iipay Nation will take actions necessary to ratify the filing. Deficient resolutions authorizing a bankruptcy filing can be ratified and made valid *post de facto*. See *In re Avalon Hotel Partners*, 302 B.R. 377, 381 (Bankr.D.Or.2003) (finding that a board of directors can and did ratify by consent resolution a bankruptcy filing that was initially deficient and without corporate authority). Although the Iipay Nation believes that it is wholly unnecessary, so as to eliminate any doubt as to proper authorization, the Iipay Nation's legislature is preparing a legislative bill to ratify the authorization to file the Debtor's bankruptcy. The

1 legislative process will take approximately 45 days for the bill to become law. The Iipay Nation  
2 is strongly confident that the law will pass due to the legislature's and General Council's support  
3 for the Debtor's bankruptcy filing. Under the Iipay Nation's current constitution, General  
4 Council authorization is not necessary to authorize the Debtor's bankruptcy filing. The General  
5 Council resolutions cited to by the YAN were made under the repealed Articles of Association.  
6 Therefore, the Court should find that the Debtor had proper authority to file for bankruptcy but,  
7 even if the authorization were deficient, it will be cured, and thus there is no reason to dismiss the  
8 bankruptcy case.

9 **B. The Debtor's Bankruptcy Filing and Status as a Debtor in Possession Does Not**  
10 **Violate IGRA**

11 The Debtor does not need permission from the NIGC under IGRA to file for bankruptcy.  
12 The management and control of the Casino and gaming operations has not changed by virtue of  
13 the Debtor being a debtor in possession. The Supreme Court has stated that when dealing with  
14 specialized areas of federal non-bankruptcy law, it does not behoove the process to become overly  
15 involved in the distinctions between debtors and debtors in possession when they are essentially  
16 the same entity, as these distinctions often have little bearing on the non-bankruptcy area of the  
17 law. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 527-28 (1983) (discussing whether the  
18 debtor in possession was an "alter ego" or "successor employer" of the debtor pre-bankruptcy and  
19 deciding: "We see no profit in an exhaustive effort to identify which, if either, of these terms  
20 represents the closest analogy to the debtor in possession . . . . For our purposes, it is sensible to  
21 view the debtor in possession as the same 'entity' which existed before the filing of the  
22 bankruptcy petition, but empowered by virtue of the Bankruptcy Code to deal with its contracts  
23 and property in a manner it could not have employed absent the bankruptcy filing."). Therefore,  
24 the Court should find that the distinction (if any) between the Debtor and debtor in possession in  
25 this case should be no bar to filing bankruptcy.

26 There is no violation of IGRA by way of the Debtor operating under the Bankruptcy Code  
27 with respect to use of its cash and subject to its operating budget. The Debtor has been operating  
28

1 without incident or interference since the petition date. In fact, due to the imposition of the  
 2 automatic stay under section 362 of the Bankruptcy Code, operations have been smoother than  
 3 before the bankruptcy filing because the Debtor is operating with a bank account and without fear  
 4 that its property will be seized by the YAN and its bank accounts levied and frozen by San Diego  
 5 County.

6 Moreover, the Debtor listed the NIGC on its bankruptcy filing master mailing list and  
 7 included it as a noticed party, with notice mailed to the National Indian Gaming Commission,  
 8 Attention: Lawrence S. Roberts, 1411 L Street NW, Suite 9100, Washington, DC 2005. If the  
 9 NIGC believes that the creation of the debtor in possession violates IGRA or that NIGC  
 10 permission was required for bankruptcy filing, then it could make such an argument, but it has  
 11 not.

## 12 VI.

### 13 CONCLUSION

14 **WHEREFORE**, the Debtor respectfully requests that the Court: (i) overrule the YAN's  
 15 Motion in its entirety, (ii) find that the Debtor is an unincorporated company eligible for relief  
 16 under the Bankruptcy Code, (iii) find that the Debtor's bankruptcy filing is valid, and (iv) grant  
 17 such other and further relief as the Court may deem just and proper under the circumstances.

18 Dated: August 20, 2012

SANTA YSABEL RESORT AND CASINO

19 By: /s/ Ron Bender

20 RON BENDER

21 JOHN-PATRICK M. FRITZ

22 LEVENE, NEALE, BENDER, YOO  
 & BRILL L.L.P.

23 Proposed Counsel for Debtor and  
 Debtor in Possession



**DECLARATION OF VIRGIL PEREZ**

I, Virgil Perez, hereby declare as follows:

1. I am over 18 years of age. I have personal knowledge of the facts set forth herein, and, if called as a witness, could and would testify competently with respect thereto.

2. I am the duly elected and sitting Chairman of the Iipay Nation of Santa Ysabel (the "Iipay Nation"). I have held my position as Chairman since December 5, 2010.

3. I have access to the books and records of the Iipay Nation. I am familiar with the history, organization, operations and financial condition of the Iipay Nation. The records and documents referred to in this Declaration constitute writings taken, made, or maintained in the regular or ordinary course of the Iipay Nation's business at or near the time of act, condition or event to which they relate by persons employed by the Iipay Nation who had a duty to the to accurately and completely take, make, and maintain such records and documents.

4. I make this declaration based on my own personal knowledge and upon the books and records of the Iipay Nation.

5. I make this declaration in support of the Opposition to Motion to Dismiss Bankruptcy Case for Lack of Eligibility and Authority (the "Opposition") filed by Santa Ysabel Resort and Casino (the "Debtor"). Unless otherwise stated all capitalized terms herein have the same meanings as ascribed to them in the Opposition.

6. The intent of the Debtor, and of the Iipay Nation as 100% owner of the Debtor, was to file the chapter 11 bankruptcy for the Santa Ysabel Resort and Casino only. If the Court determines that the Santa Ysabel Resort and Casino is not its own entity as an unincorporated company separate and apart from the Iipay Nation, then the Iipay Nation voluntarily requests that the Court dismiss the bankruptcy case.

7. The Iipay Nation is a federally recognized Indian tribe, comprised of approximately 918 enrolled tribal members. The Iipay Nation occupies the Santa Ysabel Indian Reservation, consisting of 15,500 acres of Indian reservation land. The Iipay Nation has a tribal government with a tribal council and chairman that see to its government functions. The Iipay

1 Nation pays its tribal government employees, and it has its own tax ID number (953215892)  
2 separate from the Debtor and its tax ID number.

3 8. Wholly owned, but separate and apart from the Iipay Nation, the Debtor operates a  
4 casino gaming business. The Debtor has 120 employees, approximately half of which are tribal  
5 members of the Iipay Nation and half which are not. The Santa Ysabel Resort and Casino is not a  
6 federally recognized Indian tribe. The Santa Ysabel Resort and Casino owns no land and has no  
7 tribal government. The Santa Ysabel Resort and Casino maintains insurance in its own name,  
8 enters into contracts in its own name, and generates revenue to pay its operating expenses and 120  
9 employees. The Debtor pays sales taxes to the Iipay Nation. Furthermore, the Debtor has entered  
10 into loan agreements with the Iipay Nation, recognizing one as lender and the other as borrower  
11 and as two separate entities.

12 9. Prior to the Debtor's bankruptcy filing, I, as Chairman of the Iipay Nation, met  
13 with the Iipay Nation's legislators and General Council and discussed the filing of the Debtor's  
14 bankruptcy. The legislators and I consulted with the Iipay Nation's general counsel, Huggy  
15 Lamar Price, Esq., regarding the decision to file the Debtor's bankruptcy case. The legislators  
16 and General Council supported the decision and authorized me to commence the Debtor's  
17 bankruptcy case by signing the resolution to authorize the filing.

18 10. It is the Iipay Nation's tradition for the Chairman to make major, high-end  
19 business decisions regarding the Debtor, such as whether to file for bankruptcy. In keeping with  
20 that tradition, the Iipay Nation's legislators, general counsel, and I, as Chairman, determined that  
21 no resolution of the legislative branch or General Council would be needed to authorize the  
22 bankruptcy filing. After the bankruptcy filing, the legislators and I discussed the bankruptcy  
23 filing with the General Council at a regularly scheduled General Council meeting, there was no  
24 opposition, and the General Council showed general support.

25 11. Although I believe that it is wholly unnecessary, so as to eliminate any doubt as to  
26 proper authorization, the Iipay Nation's legislature is preparing a legislative bill to ratify the  
27 authorization to file the Debtor's bankruptcy. The legislative process will take approximately 45  
28

1 days for the bill to become law. I am strongly confident that the law will pass due to the  
2 legislature's and General Council's overwhelming support for the Debtor's bankruptcy filing,  
3 which they approved prepetition in my consultations with them.

4 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
5 knowledge. Executed this 20th day of August, 2012, at Santa Ysabel, California.

6  
7  
8   
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
VIRGIL PEREZ

**DECLARATION OF DAVID CHELETTE**

I, David Chelette, hereby declare as follows:

1. I am over 18 years of age. I have personal knowledge of the facts set forth herein, and, if called as a witness, could and would testify competently with respect thereto.

2. I am the general manager of Santa Ysabel Resort and Casino (the "Debtor"), the chapter 11 debtor and debtor in possession in the above-referenced bankruptcy case. I have been employed by the Debtor since March 11, 2007.

3. I have access to the books and records of the Debtor. I am familiar with the history, organization, operations and financial condition of the Debtor. The records and documents referred to in this Declaration constitute writings taken, made, or maintained in the regular or ordinary course of the Debtor's business at or near the time of act, condition or event to which they relate by persons employed by the Debtor who had a business duty to the Debtor to accurately and completely take, make, and maintain such records and documents.

4. I make this declaration based on my own personal knowledge and upon the books and records of the Debtor.

5. I make this declaration in support of the Opposition to Motion to Dismiss Bankruptcy Case for Lack of Eligibility and Authority (the "Opposition") filed by the Debtor. Unless otherwise stated all capitalized terms herein have the same meanings as ascribed to them in the Opposition.

6. The intent of the Debtor, and of the Iipay Nation as 100% owner of the Debtor, was to file the chapter 11 bankruptcy for the Santa Ysabel Resort and Casino only. If the Court determines that the Santa Ysabel Resort and Casino is not its own entity as an unincorporated company separate and apart from the Iipay Nation, then the Iipay Nation voluntarily requests that the Court dismiss the bankruptcy case.

7. The Debtor is a business of 120 employees comprised of management, mid-level management, its own accounting department, and service employees. These many people carry on a business in gaming operations and the running of a casino, and the money generated from the



1 operation of the business is used to fund the business. The Debtor pays its payroll to its 120  
2 employees from the funds generated from its own business operations at the casino and no other  
3 funds. The Debtor has its own tax ID number. The Debtor has its own contracts with vendors, its  
4 own insurance where it is the named insured, and it has its own debts owed to creditors.

5 8. Much like what happened prepetition, if San Diego County levies the Debtor's  
6 bank account, the Debtor cannot cut checks to pay its employees and vendors, and the Debtor's  
7 business will be severely hindered, if not shut down. If the YAN pull up to the Casino with a  
8 number of flat-bed trucks to foreclose on the personal property and gaming equipment at the  
9 Casino, the Debtor's business will shut down. There will be no business to operate, no funds will  
10 be generated, no employees will be paid, 120 people will lose their jobs, and they very real  
11 business of running and operating the Casino will be destroyed.

12 9. The Debtor carries on a business of operating a casino with 120 employees.

13 10. The Debtor holds approximately \$1.5 million of personal property (as listed on  
14 schedule B of its Bankruptcy Schedules) without which it cannot carry on its business.

15 11. The Debtor has debts owed to dozens of creditors that are not co-debts of the Iipay  
16 Nation (compare schedules F and H of the Debtor's Bankruptcy Schedules, showing only five  
17 debts where the Iipay Nation is a co-debtor). A true and correct copy of schedules F, G, and H of  
18 the Debtor's Bankruptcy Schedules are attached as Exhibit "A" hereto.

19 12. The Debtor pays for its own insurance, and the named insured is "Santa Ysabel  
20 Resort & Casino." A true and correct copy of the Debtor's insurance is attached as Exhibit "B"  
21 hereto.

22 13. The Debtor pays sales taxes to the Iipay Nation, and the Debtor pays employee  
23 related taxes by way of its own tax ID number. A true and correct copy of a letter from the IRS  
24 showing the Debtor's tax ID number is attached as Exhibit "C" hereto.

25 14. The Debtor operates the casino for the purpose of making a profit, even though its  
26 recent cash flow breaks even, and I, along with Charles Bauman and approximately 120  
27 employees (over half of which are not members of the Iipay Nation) conduct the business at the  
28

1 casino.

2 15. The Debtor has 120 employees in pursuit of the common business object of  
3 running a casino, which provides sufficient revenue to pay its ordinary operating costs and  
4 payroll, operating under a controlled structure with a hierarchy of management, middle  
5 management, an accounting department, and a recognized decision-making structure through its  
6 management. Additionally, it has its own debtors and creditors, specifically, it has contracted  
7 with several entities in its own capacity, separate and apart from the Iipay Nation, as shown on  
8 Schedule G of the Bankruptcy Schedules, and the Debtor has several trade creditors that are  
9 creditors of the Debtor alone and not the Iipay Nation, as shown by reference to Schedules F and  
10 H of the Bankruptcy Schedules. Contracts between the Debtor (not the Iipay Nation), on the one  
11 hand, and various third parties, on the other hand, are attached as Exhibit "D" hereto.

12 16. The Santa Ysabel Resort and Casino is not a federally recognized Indian tribe.  
13 The Santa Ysabel Resort and Casino owns no land and has no tribal government. The Santa  
14 Ysabel Resort and Casino maintains insurance in its own name, enters into contracts in its own  
15 name, and generates revenue to pay its operating expenses and 120 employees. The Debtor pays  
16 sales taxes to the Iipay Nation. Furthermore, the Debtor has entered into loan agreements with  
17 the Iipay Nation, recognizing one as lender and the other as borrower and as two separate entities.  
18 Attached hereto as Exhibit "E" is a true and correct copy of a loan agreement between the Iipay  
19 Nation and the Debtor.

20 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
21 knowledge. Executed this 20 day of August, 2012, at Santa Ysabel, California.

22  
23   
24 DAVID CHELETTE

**EXHIBIT “A”**

B6F (Official Form 6F) (12/07)

In re Santa Ysabel Resort and CasinoCase No. 12-09415-11

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether the husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules and, if the debtor is an individual with primarily consumer debts, report this total also on the Statistical Summary of Certain Liabilities and Related Data.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	Husband, Wife, Joint, or Community				C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H	W	J	C				
Account No. 456196  ADP, INC. PO BOX 31001-1874 PASADENA, CA 91110-1874	-								888.22
Account No. n/a  ADTRUKS 119 N. EL CAMINO REAL, E116 ENCINITAS, CA 92024	-								2,000.92
Account No. 3450  AGILYSYS NV, LLC 1858 PAYSHERE CIRCLE CHICAGO, IL 60674	-								1,383.83
Account No. unknown  ARISTOCRAT DEPT 9540 LOS ANGELES, CA 90084-9540	-								102,603.11
Subtotal (Total of this page)									106,876.08

9 continuation sheets attached



B6F (Official Form 6F) (12/07) - Cont.

In re Santa Ysabel Resort and CasinoCase No. 12-09415-11

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. 7-7815170  BALLY TECHNOLOGIES, INC. LOCKBOX #749335 LOS ANGELES, CA 90074	-		gaming lease fees				2,250.00
Account No. 1021706  CBS OUTDOOR PO BOX 33074 NEWARK, NJ 07188-0074	-		billboard signage				101,745.00
Account No. 289620  CERTEGY CHECK SERVICES, INC. PO BOX 30038 TAMPA, FL 33630-3038	-		check cashing services				869.37
Account No. 1998  CINTAS CORPORATION #55 460 W CALIFORNIA AVE VISTA, CA 92083	-		uniforms, rugs, laundry				7,181.44
Account No. 61905  COLUMBIA PACIFIC TELESYSTEMS 7909 SILVERTON AVE., STE 201 SAN DIEGO, CA 92126	-		phone maintenance service				315.00
Sheet no. <u>1</u> of <u>8</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							Subtotal (Total of this page) <b>112,360.81</b>

B6F (Official Form 6F) (12/07) - Cont.

In re **Santa Ysabel Resort and Casino**Case No. **12-09415-11**

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
		H W J C					
Account No. 12533  COX MEDIA LOCKBOX 50456 LOS ANGELES, CA 90074		-	television advertising				20,920.00
Account No. 72066  CREST BEVERAGE LLC PO BOX 848536 LOS ANGELES, CA 90084-8536		-	alcohol				1,808.90
Account No. 7187749  FARMER BROS CO PO BOX 79705 CITY OF INDUSTRY, CA 91716-9705		-	coffee products				474.73
Account No. n/a  GALAXY GAMING 6980 O'BANNON DRIVE LAS VEGAS, NV 89117		-	gaming lease fees				1,226.55
Account No. 101627  GEMGROUP INC. dba GEMACO INC. 2925 NORTH 7 HWY BLUE SPRINGS, MO 64014		-	table game cards				1,137.29
Sheet no. <u>2</u> of <u>9</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							Subtotal (Total of this page)
							25,567.47

B6F (Official Form 6F) (12/07) - Cont.

In re **Santa Ysabel Resort and Casino**Case No. **12-09415-11**

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R	H U S B A N D W I F E J O I N T O R C O M M U N I T Y	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S C U S S I O N E D	AMOUNT OF CLAIM
Account No. n/a  GLOBAL CASH ACCESS, INC. 3525 EAST POST RD - STE 120 LAS VEGAS, NV 89120	-		credit card cashing service				3,607.27
Account No. RN25131  GLOBAL POWER GROUP, INC. 12060 WOODSIDE AVENUE LAKESIDE, CA 92040	-		generator				44,360.00
Account No. C07951  HERITAGE OPERATING, L.P., dba PROFLAME PO BOX 7 SANTA YSABEL, CA 92070	-		propane				3,668.48
Account No.  IGT Attn: Legal Department 9285 Prototype Drive Reno, NV 89521	-		Participation and Wide Area Progressive Fees				767,900.58
Account No.  Iipay Nation of Santa Ysabel PO Box 130 Santa Ysabel, CA 92070	-		Rentals and Gaming Commission Fees				15,000.00
Sheet no. <u>3</u> of <u>9</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							
Subtotal (Total of this page)							<b>834,536.33</b>

B6F (Official Form 6F) (12/07) - Cont.

In re **Santa Ysabel Resort and Casino**Case No. **12-09415-11**

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E B O R O W E R	H W J C	Husband, Wife, Joint, or Community  DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. <b>STYSALRSTCA-28</b>  <b>IMPACT PAPER AND INK, LTD</b> <b>1590 GILBRETH RD</b> <b>BURLINGAME, CA 94010</b>		-	<b>paper rolls</b>				<b>236.00</b>
Account No. <b>n/a</b>  <b>INTERNAL REVENUE SERVICE</b> <b>KANSAS CITY, MO 64999-0202</b> <b>KANSAS CITY, MO 64999-0202</b>		-	<b>penalty related to filling out of 1099 forms</b>			<b>X</b>	<b>2,650.00</b>
Account No. <b>n/a</b>  <b>JOHN FARKASH</b> <b>PO BOX 576</b> <b>RANCHO SANTA FE, CA 92067</b>		-	<b>former office space lease</b>				<b>8,910.00</b>
Account No. <b>n/a</b>  <b>JOSEPH M. CABALLERO</b> <b>5864 W. MOHAVE BLOOM</b> <b>TUCSON, AZ 85735</b>		-	<b>graphic design</b>				<b>26,250.00</b>
Account No. <b>R0410</b>  <b>LA FE TORTILLERIA, INC.</b> <b>PO BOX 787</b> <b>SAN MARCOS, CA 92079</b>		-	<b>tortillas</b>				<b>30.65</b>
Sheet no. <b>4</b> of <b>9</b> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							
							<b>Subtotal (Total of this page)</b>
							<b>38,076.65</b>



B6F (Official Form 6F) (12/07) - Cont.

In re **Santa Ysabel Resort and Casino**Case No. **12-09415-11**

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B I T O R	H W J C	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G M E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. n/a			Slot machine parts				870.35
LANDRY HOLDING, LLC, dba CASINOTECH PO BOX 2167 CYPRESS, TX 77410		-					
Account No. 154756			pest and rodent service				1,200.00
LLOYD PEST CONTROL 1202 MORENA BLVD - STE 400 SAN DIEGO, CA 92110-3845		-					
Account No. 6857			cleaning supplies				1,279.42
MAINTEX INC. PO BOX 7110 INDUSTRY, CA 91744-7110		-					
Account No. n/a			bus coordinator				576.00
MARISELA MILLAN 1414-B BROADWAY CHULA VISTA, CA 91911		-					
Account No. 765-248-1			accounting services				2,000.00
MCGLADREY & PULLEN, LLP 18401 VON KARMAN AVE - 5th FL IRVINE, CA 92612-8531		-					
Subtotal (Total of this page)							5,925.77

Sheet no. 5 of 9 sheets attached to Schedule of  
Creditors Holding Unsecured Nonpriority Claims

B6F (Official Form 6F) (12/07) - Cont.

In re **Santa Ysabel Resort and Casino**Case No. **12-09415-11**

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O O R D I N A T O R	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. n/a  MIAMI TRIBE OF OKLAHOMA MBDA, 66201 E. 290 ROAD GROVE, OK 74344			gaming lease				1,205.21
Account No. order# 41118  MIDWEST TELEVISION, INC. 7677 ENGINEER ROAD SAN DIEGO, CA 92111			radio advertising				3,962.50
Account No. 80177167  MOBILE MINI LLC PO BOX 79149 PHOENIX, AZ 85062-9149			seatrail rental				384.16
Account No. 439461  NUCO2 INC. PO BOX 9011 STUART, FL 34995-9011			pressurized gas				528.20
Account No. 54-RY 237592  RAMONA DISPOSAL SERVICE PO BOX 6450 BUENA PARK, CA 90622			trash service				1,283.36
Sheet no. <u>6</u> of <u>9</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							
Subtotal (Total of this page)							<b>7,363.43</b>

B6F (Official Form 6F) (12/07) - Cont.

In re **Santa Ysabel Resort and Casino**Case No. **12-09415-11**

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O N T R I B U T O R	H U S B A N D , W I F E , J O I N T , O R C O M M U N I T Y	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. <b>565519</b>  <b>REGAL WINE COMPANY</b> <b>FILE NO. 72956, PO BOX 60000</b> <b>SAN FRANCISCO, CA 94160-2956</b>			<b>alcohol</b>				<b>351.00</b>
Account No. <b>255497</b>  <b>SCENTAIR TECHNOLOGIES INC.</b> <b>75 REMITTANCE DR - STE 6542</b> <b>CHICAGO, IL 60675-6542</b>			<b>air conditioner scent</b>				<b>700.00</b>
Account No. <b>SANT002</b>  <b>SHUFFLE MASTER, INC.</b> <b>DEPT. 6961</b> <b>LOS ANGELES, CA 90084-6961</b>			<b>gaming lease fees</b>				<b>1,190.00</b>
Account No. <b>n/a</b>  <b>STATE OF CALIFORNIA GAMBLING</b> <b>CONTROL COM</b> <b>2399 GATEWAY OAKS DR., STE 100</b> <b>SACRAMENTO, CA 95833</b>			<b>quarterly payments on gaming fees</b>				<b>146,851.05</b>
Account No. <b>n/a</b>  <b>THEON B. CROSS, dba GAMING</b> <b>GUIDE</b> <b>PO BOX 19267</b> <b>SAN DIEGO, CA 92159</b>			<b>printed advertising</b>				<b>1,200.00</b>
<div> <div>Sheet no. <u>7</u> of <u>9</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims</div> <div>Subtotal (Total of this page)</div> </div>							<b>150,292.05</b>

B6F (Official Form 6F) (12/07) - Cont.

In re **Santa Ysabel Resort and Casino**Case No. **12-09415-11**

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E F O R C R E D I T O R	H U S B A N D , W I F E , J O I N T , O R C O M M U N I T Y	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N L I Q U I D A T E D	D I S P U T E D	AMOUNT OF CLAIM
Account No. <b>4044</b>			<b>uniforms</b>				<b>54.45</b>
<b>TLM INDUSTRIES, INC. PO BOX 400 MARY ESTHER, FL 32569</b>		-					
Account No. <b>43845395</b>			<b>food supplies</b>				<b>13,333.23</b>
<b>U.S. FOODS PO BOX 100131 PASADENA, CA 91189</b>		-					
Account No. <b>271098024</b>			<b>cell phone service</b>				<b>895.49</b>
<b>VERIZON WIRELESS SERVICES, LLC PO BOX 660108 DALLAS, TX 75266-0108</b>		-					
Account No. <b>412-1020127,1020135,1135073,16</b>			<b>account maintenance fees</b>				<b>2,195.78</b>
<b>WELLS FARGO BANK, N.A. PO BOX 63020 SAN FRANCISCO, CA 94163</b>		-					
Account No. <b>331725</b>			<b>alcohol</b>				<b>462.70</b>
<b>WINE WAREHOUSE PO BOX 910900 LOS ANGELES, CA 90091-0900</b>		-					
Sheet no. <u>8</u> of <u>9</u> sheets attached to Schedule of Creditors Holding Unsecured Nonpriority Claims							Subtotal (Total of this page)
							<b>16,941.65</b>



B6F (Official Form 6F) (12/07) - Cont.

In re **Santa Ysabel Resort and Casino**Case No. **12-09415-11**

Debtor

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	C O D E D E B T O R  H W J C	Husband, Wife, Joint, or Community	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	C O N T I N G E N T	U N P A I D A M O U N T	D I S B U T E D	AMOUNT OF CLAIM
Account No. 7723  WISCONSIN LABEL CORPORATION, dba SLOT-TI DRAWER 706 MILWAUKEE, WI 53278-0706			printed slot tickets				2,233.95
Account No. n/a  WMS GAMING CORPORATE RECEIPTS 23571 NETWORK PLACE CHICAGO, IL 60673-1235			gaming lease fees				1,543.35
Account No.  							
Account No.  							
Account No.  							
Subtotal (Total of this page)							3,777.30
Total (Report on Summary of Schedules)							1,301,717.54

Sheet no. 9 of 9 sheets attached to Schedule of  
Creditors Holding Unsecured Nonpriority Claims

B6G (Official Form 6G) (12/07)

In re **Santa Ysabel Resort and Casino**Case No. **12-09415-11**

Debtor

**SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., "Purchaser", "Agent", etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described. If a minor child is a party to one of the leases or contracts, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no executory contracts or unexpired leases.

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.
Aztec Leasing 2215 Vista Rodeo Dr. El Cajon, CA 92019	Lease for copiers
Betwiser 9873 Ashton Pines Ct Las Vegas, NV 89147	Contract for Gaming Lease
Cbeyond File 50326 LOS ANGELES, CA 90074	Contract for Phone Service
Certegy PO Box 30038 Tampa, FL 33630-3038	Contract for Check Cashing Service
Cintas PO Box 633842 Cincinnati, OH 45263	Contract for Uniforms, Rugs, Laundry
Cummins PO Box 339 Mount Prospect, IL 60056	Service Contract
Egghart 5575 Kietzke Lane - Bldg. A Reno, NV 89511	Contract for Accounting Services
Gemaco 2925 North 7 Hwy Blue Springs, MO 64014	Contract for Table Game Cards
Konami Dept. 8401 Los Angeles, CA 90084-8401	Contract for Slot Machines
Proflame PO Box 7 Santa Ysabel, CA 92070	Contract for Propane Supply
Ramona Outdoor Community Centers 726 D Street Ramona, CA 92065	Contract for Sponsorship, Signage, Advertisements
SCA Promotions, Inc. 3030 LBJ Frwy. - Ste. 300 Dallas, TX 75234	Contract for Promotion Equipment

1

continuation sheets attached to Schedule of Executory Contracts and Unexpired Leases

Software Copyright (c) 1998-2012 - CCH INCORPORATED - www.bestcase.com

Best Case Bankruptcy

In re Santa Ysabel Resort and CasinoCase No. 12-09415-11Debtor**SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

(Continuation Sheet)

Name and Mailing Address, Including Zip Code, of Other Parties to Lease or Contract	Description of Contract or Lease and Nature of Debtor's Interest. State whether lease is for nonresidential real property. State contract number of any government contract.
<b>ScentAir</b> <b>75 Remittance Dr. - Ste. 6542</b> <b>Chicago, IL 60675-6542</b>	<b>Contract for Airconditioner Scent</b>
<b>Sharp</b> <b>Dept LA 21565</b> <b>Pasadena, CA 91185-1565</b>	<b>Maintenance Contract</b>

Sheet 1 of 1 continuation sheets attached to the Schedule of Executory Contracts and Unexpired Leases

B6H (Official Form 6B) (12/07)

In re **Santa Ysabel Resort and Casino**Case No. **12-09415-11**

Debtor

**SCHEDULE H - CODEBTORS**

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
lipay Nation of Santa Ysabel PO Box 130 Santa Ysabel, CA 92070	Aztec Leasing 2215 Vista Rodeo Drive El Cajon, CA 92019
lipay Nation of Santa Ysabel PO Box 130 Santa Ysabel, CA 92070	Proflame PO Box 7 Santa Ysabel, CA 92070
lipay Nation of Santa Ysabel PO Box 130 Santa Ysabel, CA 92070	IGT Attn: Legal Department 9295 Prototype Drive Reno, NV 89521
lipay Nation of Santa Ysabel PO Box 130 Santa Ysabel, CA 92070	San Diego County Office of County Counsel 1600 Pacific Highway, Rm 355 San Diego, CA 92101
lipay Nation of Santa Ysabel PO Box 130 Santa Ysabel, CA 92070	YAVAPAI-APACHE NATION P.O. Box 1188 Camp Verde, AZ 86322

0

continuation sheets attached to Schedule of Codebtors



## **EXHIBIT “B”**


**Fidelity & Crime Division**

August 31, 2011

RE: **Santa Ysabel Resort & Casino**  
**Binder**

Thank you for the order to bind! Please consider coverage bound effective August 31, 2011, per the following terms and conditions:

---

**Named Insured:** Santa Ysabel Resort & Casino  
**Policy Number:** CRP 347-90-64  
**Effective:** 08/31/2011 - 08/31/2012

---

1	Employee Theft	\$300,000	\$50,000
2	Forgery or Alteration	\$300,000	\$50,000
3	Inside the Premises – Theft of Money and Securities	\$300,000	\$50,000
4	Inside the Premises – Robbery or Safe Burglary of Other Property	\$300,000	\$50,000
5	Outside the Premises	\$300,000	\$50,000
6	Computer Fraud	\$300,000	\$50,000
7	Funds Transfer Fraud	\$300,000	\$50,000
8	Money Orders and Counterfeit Paper Currency	\$300,000	\$50,000

---

**Annual Premium:** \$5,937

---

**Endorsements/Enhancements to be included:**

Discovery Form

In Witness Clause

Counterfeit Chips & Tokens Endorsement

State Endorsements (CA): CR 02 49

**www.CrimeInsurance.com**  
 One Waterside Crossing, Windsor, CT 06095  
 Member of American Financial Group



Date: August 31, 2011

Named Assured: Santa Ysabel Resort &amp; Casino

Location: Santa Ysabel, CA

Policy Number: NACL00310-05

Policy Period: August 31, 2011 to August 31, 2012

Please review this letter carefully. These terms may vary from the coverages and limits and other provisions requested in the application.  
This binder is valid for 60 days from the date of this letter.

**SUMMARY OF COVERAGES, LIMITS, PREMIUMS, AND RETAINED LIMITS**

## Coverage Part I

Insuring Agreement & Coverage	Limits of Insurance		Retained Limit		Premium
Insuring Agreement A General Liability including Contractual Liability	\$5,000,000	Each Occurrence	\$1,000	Each Occurrence Indemnity Only	Included
Products/Completed Operations Liability (except as provided under Insuring Agreement G.)	\$5,000,000	Each Occurrence			
	\$7,000,000	Annual Aggregate			
Fire Legal Liability	\$100,000	Each Occurrence			
Insuring Agreement B - Liquor Liability	\$5,000,000	Each Occ and Annual Aggregate	\$1,000	Each Occurrence Indemnity Only	Included
Insuring Agreement C - Cemetery Malpractice Liability	--	Each Occ and Annual Aggregate	--	Each Occurrence Indemnity Only	Excluded
Insuring Agreement D - Innkeeper's Legal Liability	--	Each Occ and Annual Aggregate	--	Each Occurrence Indemnity Only	Excluded

CLAIMS COVERED UNDER INSURING AGREEMENTS A, B, C, &amp; D ARE SUBJECT TO A GENERAL AGGREGATE LIMIT OF: \$10,000,000

Insuring Agreement E - Police and/or Law Enforcement Officials Liability	--	Each Occ and Annual Aggregate	--	Each Occurrence Indemnity Only	Excluded
Insuring Agreement F - Automobile Liability Incl. Hired and Non-Owned Auto Liability	\$5,000,000	Each Occurrence	\$1,000	Each Occurrence Indemnity Only	Included
Auto Medical Payments Coverage	\$5,000	Per Person	--		Included
PIP	Not Covered	Per Person	--		Excluded
Uninsured/Underinsured Motorists Coverage	\$1,000,000	Each Occurrence	--		Included
Insuring Agreement G - Automobile Physical Damage Incl. Hired Auto Physical Damage	Per Schedule Filed w/ Hudson		\$500	Each Occurrence	Included
Garagekeepers Legal Liability (Valet Parking)	Not Covered		--	Each Occurrence	
Garage Liability and Garagekeeper's Legal	--		--	Each Occurrence	

## Coverage Part II

Insuring Agreement H - Tribal Officials E&O Liability * Retroactive Date:	--	Each Claim -- Annual Aggregate	--	Each Claim Indemnity & Expense	Excluded
Insuring Agreement I - Misc. Errors/Omissions Liability * Retroactive Date:	--	Each Claim -- Annual Aggregate	--	Each Claim Indemnity & Expense	Excluded
Insuring Agreement J - Employee Benefits Liability * Retroactive Date: August 31, 2007	\$1,000,000	Each Claim \$1,000,000 Annual Aggregate	\$1,000	Each Claim Indemnity & Expense	Included
Insuring Agreement K - Medical Malpractice Liability * Retroactive Date:	--	Each Claim -- Annual Aggregate	--	Each Claim Indemnity & Expense	Excluded
Insuring Agreement L - Employment Practices Liability * Retroactive Date: August 31, 2007	\$1,000,000	Each Claim \$1,000,000 Annual Aggregate	\$1,000	Each Claim Indemnity & Expense	Included
Insuring Agreement M - Sexual Misconduct Liability * Retroactive Date: August 31, 2007	\$100,000	Each Claim \$300,000 Annual Aggregate	\$1,000	Each Claim Indemnity & Expense	Included
Insuring Agreement N - Fiduciary Liability * Retroactive Date:	--	Each Claim -- Annual Aggregate	--	Each Claim Indemnity & Expense	Excluded
Insuring Agreement O - E-Commerce Liability * Retroactive Date:	--	Each Claim -- Annual Aggregate	--	Each Claim Indemnity & Expense	Excluded



## Coverage Part III - Crime Insurance

Insuring Agreement & Coverage	Limits of Insurance	Retained Limit	Premium
Insuring Agreement A (i) Money & Valuable Instruments and Other Tangible Property Within Premises	-- Each Loss	-- Each Occ - Indemnity and Expense	Excluded
Insuring Agreement A (ii) Money & Valuable Instruments and Other Tangible Property Outside Premises	-- Each Loss	-- Each Occ - Indemnity and Expense	Excluded
Insuring Agreement B Employee Theft	-- Each Loss	-- Each Occ - Indemnity and Expense	Excluded
Insuring Agreement C Faithful Performance	-- Each Loss	-- Each Occ - Indemnity and Expense	Excluded
Insuring Agreement D Computer Fraud	-- Each Loss	-- Each Occ - Indemnity and Expense	Excluded
Insuring Agreement E Falsified Instruments and Instructions	-- Each Loss	-- Each Occ - Indemnity and Expense	Excluded

Premium Total: \$23,854

Fees (if any): \$0

GRAND TOTAL: \$23,854

\* Retroactive date affords coverage to unknown claims only.

Terrorism Coverage: Coverage for acts of terrorism is included in this policy.

Policy Form: Sovereign Nation Commercial Insurance Declaration (07/2009 Edition)  
Sovereign Nation Commercial Insurance Policy (07/2011 Edition)

**This coverage is bound subject to the following terms and conditions:**

This binder is not intended to be a complete explanation of policy coverage or terms. Actual policy will govern the scope and limits of protection afforded.



## **EXHIBIT “C”**

APR-27-2012 04:39

IRS

8016205372

P.02/02



**Department of the Treasury**  
**Internal Revenue Service**  
**Ogden, UT 84201**

In reply refer to: 0448580587  
Apr 27, 2012 LTR 147C  
20-1366478

**SANTA YSABEL GAMING ENTERPRISE**  
**SANTA YSABEL RESORT & CASINO**  
**% PHIL PEPPL**  
**25575 HIGHWAY 79**  
**SANTA YSABEL CA 92070-0000 000**

Taxpayer Identification Number: 20-1366478

Form(s):

Dear Taxpayer:

This letter is in response to your telephone inquiry of April 27th, 2012.

Your Employer Identification Number (EIN) is 20-1366478. Please keep this number in your permanent records. You should enter your name and your EIN, exactly as shown above, on all business federal tax forms that require its use, and on any related correspondence documents.

If you have any questions regarding this letter, please call our Customer Service Department at 1-800-829-0115 between the hours of 7:00 AM and 10:00 PM. If you prefer, you may write to us at the address shown at the top of the first page of this letter. When you write, please include a telephone number where you may be reached and the best time to call.

Sincerely,

Mr. Greenwood  
1000779043  
Customer Service Representative

TOTAL P.02

## **EXHIBIT “D”**



Please fill in your Client Name and 12 digit TASC Client ID and  
Sign and fax all pages of the agreement to 608-245-3623

CLIENT NAME: SANTA YSABEL RESORT & CASINO

CLIENT ID: 4701-5500-6806

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made this 19 day of FEBRUARY, 2010, by and between SANTA YSABEL CASINO ("Covered Entity") and Total Administrative Services Corporation, a Wisconsin corporation ("Business Associate").

### RECITALS

**WHEREAS**, Covered Entity is a group health plan ("Plan") and wishes to engage the services of Business Associate with respect to certain administrative aspects of the Plan as more specifically set forth in a Service Level Agreement ("SLA");

**WHEREAS**, Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the SLA, some of which may constitute Protected Health Information ("PHI") (defined below).

**WHEREAS**, Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the SLA in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the "HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

**WHEREAS**, as part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Agreement.

**NOW THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

The general terms and conditions attached hereto are incorporated herein and deemed part of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the date first written above.

COVERED ENTITY:

BUSINESS ASSOCIATE:  
**TOTAL ADMINISTRATIVE  
SERVICES CORPORATION**

By: 

Print Name: Don Trumbull

Title: General Manager

By: 

Print Name: Brad Hoffman

Title: Director - Customer Service

## TERMS AND CONDITIONS

### 1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall mean Total Administrative Services Corporation.
- c. **Covered Entity** shall mean the party identified above.
- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- j. **Protected Health Information** or **PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- k. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
- l. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- m. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

### 2. Obligations of Business Associate

- a. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the SLA and as permitted under the SLA and this Agreement. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the SLA and as permitted under the SLA and this Agreement. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) an agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(ii)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].





- c. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operation purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the SLA.
- d. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the SLA or this Agreement, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
- e. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity any access, use or disclosure of Protected Information not permitted by the SLA and this Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 60 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- f. **Business Associate's Agents.** Business Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by subparagraph d above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)].
- g. **Access to Protected Information.** Within thirty (30) days of receiving a written request from Covered Entity, Business Associate shall make Protected Information maintained by Business Associates or its agents or subcontractors in Designated Record Sets available to Covered Entity, in reasonable time and manner, for inspection and copying to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. **Amendment of PHI.** Business Associate or its agents or subcontractors shall, in a reasonable time and manner, make Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate shall notify Covered Entity of the request. Any approval or denial of an amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
- i. **Accounting Rights.** Business Associate and its agents or subcontractors shall, in a reasonable time and manner, make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17935(c). In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall forward it to Covered Entity. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Sections 2.b. of this Agreement [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph i shall survive the termination of this Agreement.
- j. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of



determining Business Associate and/or Covered Entity's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)].

- k. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)]. Business Associate and Covered Entity acknowledge and agree that the definition of "minimum necessary" is in flux and shall keep themselves informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- l. **Notification of Breach.** During the term of the SLA, Business Associate shall notify Covered Entity, as soon as practicable after discovery, of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which Business Associate becomes aware.
- m. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if Business Associate knows or learns of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under the SLA, this Agreement or other arrangement, Business Associate shall take reasonable steps to cure the breach or end the violation or cause Covered Entity to cure the breach or end the violation. If the steps are unsuccessful, Business Associate is legally obligated to terminate the SLA or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. Notwithstanding anything to the contrary in the SLA, Business Associate shall not be liable for any damages suffered by Covered Entity as a result of the termination of the SLA to satisfy this obligation.

**3. Obligations of Covered Entity.** Covered Entity shall promptly notify Business Associate, in writing and in a timely manner, of any of the following:

- a. Changes in the form of notice of privacy practices ("NPP") that Covered Entity provides to individuals pursuant to 45 C.F.R. Section 164.520, and provide Business Associate a copy of the NPP currently in use.
- b. Changes in, or withdrawal of, the consent or authorization provided to Covered Entity by individuals pursuant to 45 C.F.R. Sections 164.506 or 164.508.
- c. Any arrangements permitted or required of Covered Entity that may impact in any manner the use and/or disclosure of Protected Information by Business Associate under the SLA or this Agreement, including but not limited to, restrictions on use and/or disclosure of Protected Information as provided for in 45 C.F.R. Sections 164.522.

**4. Termination**

- a. **Material Breach.** In the event that Covered Entity determines Business Associate has materially breached this Agreement, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within a reasonable time, Covered Entity may terminate this Agreement. [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Effect of Termination.** Upon termination of the Contract for any reason, Business Associate shall, to the extent feasible, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Business Associate, Business Associate shall continue to extend the protections of Section 2 of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible [45 C.F.R. Section 164.504(e)].

**5. Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the SLA or this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. Upon the request of Business Associate, Covered Entity agrees to promptly, in no case later than thirty (30) days from Business Associate's request, enter into an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws.



6. **No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

7. **Effect on SLA.** Except as specifically required to implement the purposes of this Agreement, or to the extent inconsistent with this Agreement, all terms of the SLA shall remain in force and effect.

8. **Interpretation.** This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

9. **Counterparts.** This Agreement may be executed and delivered (including by facsimile or Portable Document Format (pdf) transmission) in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other party. Any such facsimile documents and signatures shall, subject to applicable legal requirements, have the same force and effect as manually-signed originals and shall be binding on the parties hereto.

Handwritten initials, possibly "PJ", enclosed within a hand-drawn oval.

**NICOLE WADDELL, CPA**  
**CERTIFIED PUBLIC ACCOUNTANT**  
**760.703.8818 - NWCFA@HOTMAIL.COM**

---

**Proposal Prepared For:**

SANTA YSABEL CASINO

**Services Proposed:**

Re-Constructive  
Accounting

**Date:**

June 16, 2008

---

LIC. 96596  
P.O. BOX 3131, RAMONA, CA 92065  
MEMBERSHIPS: AICPA, CALIFORNIA SOCIETY OF CPAs  
WWW.NWADDELLCPA.COM



**PROPOSAL FOR ACCOUNTING SERVICES****2004-2007****SERVICES**

At the request of Management I will assist the Casino's Controller Sandy Smith with the re-construction of historical financial data. This information will be derived from the Casino's bank statements from 2004 thru 2007. The work will take place at my office located in Ramona, California.

As agreed by management this data will be translated and posted using QuickBooks Accounting software. Input into this software will thus assist the Casino in re-creating financial statement data the time period indicated. It is the anticipation of management that this data will be used to provide beginning balances as of 2007 for input into Mas 90.

My services are merely a tool to assist management in the re-constructing of the Casino's historical accounting data. Therefore, Management acknowledges and accepts responsibility for all historical and current accounting data in the accounting re-construction. Management also accepts responsibility for review and approval of the historical QuickBooks's data and beginning balances transferred to Mas 90.

**FEES**

I anticipate normal assistance from the organization's staff to include providing relevant data for the re-constructive accounting from 2004 thru 2007

The fee for these services will be \$4,000. The billing schedule will be as follows:

Invoice 1 retainer \$1,000 - due with approval of this proposal

Invoice 2 \$1,500 due 6/30/07

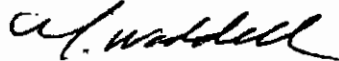
Invoice 3 \$1,500 due 7/15/07

If additional time is necessary it will be billed at a standard hourly billing rate of \$65 per hour. All invoices are due upon receipt.

If you would like to proceed with this engagement, please acknowledge by signing the copy of this letter and returning it to me. A retainer invoice will follow.

I sincerely appreciate this opportunity to work with you and your organization.

Thank you,



Nicole Waddell, CPA

**ENGAGEMENT ACCEPTANCE**

Date: June 16, 2008

Signed: [Signature]

Agent for Santa Ysabel Casino

Title: CEO



**NICOLE WADDELL, CPA  
CERTIFIED PUBLIC ACCOUNTANT**

**P.O. BOX 3131  
RAMONA, CA 92065  
PHONE (760) 703-8818  
FAX (760) 787-5833  
NWCPA@HOTMAIL.COM  
WWW.NWADDELLCPA.COM**

**SOLE OWNER:  
NICOLE WADDELL, CPA  
LIC. 96596**

**PUBLIC ACCOUNTING EXPERIENCE SINCE  
SINCE 2001**

**CURRENTLY PROVIDING:  
AUDIT, REVIEW, & COMPILATIONS  
TAX PREPARATION SERVICES  
MANAGEMENT ADVISORY SERVICES  
COMPUTER CONSULTING SERVICES**

**MEMBERSHIPS:  
AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS  
CALIFORNIA SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS**



2120 Harmony Grove Rd.  
Escondido, CA 92029-1008  
1 (800) 200-4799  
Fax: (760) 746-4950

## Vending Service Agreement

### Serving:

- San Diego County
- Riverside County
- Orange County
- Los Angeles County
- Imperial County
- Kern County

1. This is an agreement for the installation and operation of certain vending equipment by **take a break Service**, 2120 Harmony Grove Rd., Escondido, CA 92029, hereinafter called **tab**, within the premises owned, operated, or leased by **Santa Ysabel Casino** hereinafter called **CLIENT**.
2. **tab** agrees to install the following equipment: **Snack-Bottledrop-Cigarette** and to service the same, under normal conditions, by keeping them adequately supplied with merchandise and in good repair and in sanitary condition for the use of the **CLIENT'S** employees and/or patrons. Changes in the equipment configuration, (i.e. additional, different, or less equipment) may be made by **tab** as they deem appropriate in the best interest of both parties.
3. Prices and items sold shall be determined by **tab** with the understanding that merchandise shall be wholesome, palatable and of high quality, and the prices charged shall be no higher than that of similar merchandise in other local places of business.
  - a) **tab** reserves the right to adjust pricing should unforeseen market conditions arise.
4. **tab** further agrees to carry, at its expense, complete comprehensive insurance covering liability for damage(s) arising out of the installation and operation of its vending equipment.
5. **tab** agrees to indemnify, defend and hold the **CLIENT** harmless against all claims, loss, or liability arising from damage to or destruction of property or injury to person(s) occurring due to negligence or culpable operation, maintenance or installation of the vending service equipment.
6. **tab** agrees to hold harmless **CLIENT** for payment of taxes as a result of sales from the equipment in paragraph 2 or modification thereto and to procure in a timely manner, applicable licenses, tags, permits etc. relating to sales within the **CLIENT'S** premises.
7. In consideration of the above undertaking by **tab**, **CLIENT** agrees to and or perform the following:
  - (a) to grant to **tab** personnel the exclusive privilege of selling the kinds and types of merchandise sold from the vending equipment within **CLIENT'S** premises and on its property outside such premises, to do those things, in general, which will encourage the use of the vending equipment by **CLIENT'S** employees and/or patrons, and to take appropriate action against any unauthorized third party who seeks to invade such exclusive privileges.
  - (b) to permit **tab** to install within **CLIENT'S** premises the vending equipment described in paragraph 2 or modification thereto and to permit **tab** to operate same for the term of this agreement and any renewal thereof.
  - (c) to reimburse **tab** for the cost of licenses, tags, permits etc. relating to the operation of the equipment in paragraph 2 or modification thereto within the **CLIENT'S** premises.
  - (d) to furnish **tab**, without charge, water, electrical, service facilities and outlets for said vending equipment.
  - (e) to provide cleaning and janitorial services to all food and vending service areas.
8. The length of this agreement: one (1) year
  - (a) Shall be for a period of one (1) year from the date of the completed installation and shall automatically renew itself for similar periods unless **EITHER PARTY** gives written notice by registered mail of its intention to terminate this agreement at least (60) days before the expiration of this agreement or automatic renewal thereof.
  - (b) If at any time during this agreement or automatic renewal thereof, **CLIENT** should determine that **tab's** service is unsatisfactory, **CLIENT** shall advise **tab** by registered mail and **tab** agrees to correct such specific unsatisfactory condition(s) within a thirty (30) day period. If **tab** should fail at such corrective action as necessary to return the level of service to satisfactory within the prescribed thirty (30) day period, **CLIENT** may cancel this agreement with an additional thirty (30) days written notice by registered mail.
  - (c) If circumstances change significantly that alter the intended economic value of this agreement and if **CLIENT** and **tab** fail to renegotiate this agreement to a mutually acceptable resolution in a timely manner then **tab** reserves the right to cancel this agreement.
9. It is understood that the equipment listed in paragraph 2 or modification thereto shall remain **tab** property at all times and it is agreed the **CLIENT** will take reasonable precautions to protect same from damage and will permit **tab** to remove same upon termination of this agreement or any renewal thereof.
10. This agreement is entered into by **tab** on the express warranty and representation that the **CLIENT** operates the business within the premises owned, operated, or leased by the **CLIENT** and/or has the authority to enter into the agreement.
11. This agreement contains the entire agreement between the parties and shall be binding upon the parties thereof, respective successors, executors, administrators and assigns.
12. The laws of the State of California shall apply in all instances as to the interpretations of this agreement.

This agreement is not binding on **take a break service** until approved by President, below.

Sales Representative  
Ray V Mejia

Accepted on behalf of **take a break service**  
President

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

I hereby represent that I am authorized and have apparent authority to enter into this agreement on behalf of **CLIENT**.

I accept all terms and conditions of this agreement.

Authorized Signature

Print Name

Title

Date 7/13/07

**LICENSE AGREEMENT**

This LICENSE AGREEMENT, (the "Agreement"), is made this 11TH day of April, 2011, by and between **SquareJack Gaming**, and/or its affiliates or assignees, (the "Licensor"), and Santa Ysabel Casino (the "Licensee").

Whereas, Licensor has all rights to the table game(s) known as Mini-Tex (the "Game(s)"), including all trademarks, copyrights, patents, and other intellectual property rights relating to the manufacture, use, and sale of the Game(s), (the "Intellectual Property"), and has the right to license Intellectual Property to Licensee on the terms and conditions pursuant to this Agreement.

Now, therefore, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

**1. TERM OF AGREEMENT:**

- a. The Agreement shall commence on the 28TH day of April, 2011. Unless terminated, this Agreement shall be renewed monthly.
- b. Either party may terminate the Agreement by issuing a 30 day advance written notice. Billing will continue through the 30<sup>th</sup> day following receipt of the termination notice.
- c. If this Agreement is terminated, all non-consumable equipment for the Game(s) must be returned to Licensor by Licensee as detailed below.

**2. LEASING FEES:**

- a. Licensee agrees to pay a recurring monthly lease fee of \$ 500 per Game (per table). All fees referenced herein are U.S. currency only. 28TH
- b. Recurring monthly lease fees are due on the 1 day of each month and are applicable for the one month term beginning the following day.
- c. Lease fees are payable to SquareJack Gaming at 253 W. Westfield Ave., Roselle Park, NJ 07204.

**3. LICENSED GAMING FACILITY:**

This Agreement and the rights and privileges contained herein shall apply only to the table games within the Licensee's gaming facility; its name and address is:

Santa Ysabel Casino

25575 Highway 79

Santa Ysabel, CA 92070

**4. EQUIPMENT:**

- a. Licensee agrees to supply the table upon which to play the Game(s) and shall be responsible for the installation of all equipment and operational components associated with the Game(s).
- b. Licensee is responsible for the cost of replacement Table Felts as needed.
- c. Training Manuals shall be provided by Licensor prior to the commencement of this Agreement.

**5. INTELLECTUAL PROPERTY USE:**

- a. Licensee agrees to offer the Game(s) only in the original form and conduct play only according to the Game(s) rules supplied by the Licensor. Any modification to the Game(s) rules, Table Layouts, Table Signs or other equipment by Licensee must be approved by Licensor. Licensee agrees to use Licensor's trademarks only in association with the Game(s).
- b. The quality of the Game(s) Table Layouts and other information and equipment must meet or exceed the products supplied or otherwise made available by Licensor to Licensee. Licensor has the right to inspect licensed Game(s) at reasonable intermittent periods to ensure that the quality of the licensed Game(s) meets Licensor's quality control standards.
- c. Licensee agrees that proper notification of licensing of any of Licensor's trademarks will accompany each usage of the mark by Licensee, including an indication that the trademark is under license from Licensor.
- d. Except as provided herein, Licensee shall not acquire any rights in or to Intellectual Property by reason of Licensee's use thereof, shall not attempt to obtain any rights, and hereby disclaim any right to Intellectual Property beyond the limited rights granted herein.
- e. Licensee agrees to disclose all statistics collected on the Game(s) including but not limited to the "drop", the "hold", frequency of use, dates and times open to players and must make these statistics available at request of Licensor.

**6. ADDENDUM:**

- a. Licensor will adhere to the Tribal internal control standards applicable to the goods and services the Licensor is providing to Santa Ysabel Casino. The "goods and services" provided by the licensor refer specifically to: the lease of the intellectual property associated with the game, game rules and procedures, game artwork, any printed game materials such as rack cards or training manuals, or any materials displaying the game logo, artwork, or rules.

In witness whereof, the parties have signed this Agreement as set out below.

**LICENSEE**

Organization: SANTA YSABEL CASINO

By: [Signature]  
(authorized representative's signature)

Name: DAVID CHELETTE  
(printed)

Title: GENERAL MANAGER  
(printed)

**LICENSOR**

Organization: SquareJack Gaming

By: \_\_\_\_\_  
(authorized representative's signature)

Name: Raymond B. Smith  
(printed)

Title: Owner  
(printed)

1 of 2 pages

**Shuffle Master, Inc.**  
**License and Lease**  
**Agreement**

**Shuffle Master™**

INCORPORATED  
 1106 Palms Airport Dr., Las Vegas, NV 89119  
 Phone: (702) 897-7150 Fax: (702) 897-2284

Contract Ref #: \_\_\_\_\_ Customer #: 107SANT002

Issue Date: September 26, 2011

**Casino Name:** Santa Ysabel Resort & Casino  
**Address:** 25575 Hwy 79  
**City, State, Zip:** Santa Ysabel, CA 92070  
**Contact Name:** David Chelette  
**Title:** General Manager  
**Email:** dchelette@thesyrc.com  
**Contact Phone #:** 760-782-0909 **Fax #:** 760-230-2762

**Account Executive:**  
**Leigh Sauer**

**AE Cell:** 619-456-1274  
**AE Fax:** 702-897-2284

**Type of Action**

Line Item	Qty	License/Lease	Product Description	Unit Price Monthly Rate	Extended Price Ext. Monthly Rate
A	1	License	THREE CARD POKER® table game – <i>No charge 60 days</i>	\$495.00	\$495.00
B	1	License	6 CARD BONUS® side bet for THREE CARD POKER® table game – <i>No charge 60 days</i>	\$295.00	\$295.00

**\*PRODUCT LICENSE AND LEASE IS SUBJECT TO ALL TERMS AND CONDITIONS LISTED ON PAGES 1 & 2 OF THIS AGREEMENT**  
**LEASES/LICENSES MAY ONLY BE TERMINATED WITH 30 DAYS WRITTEN NOTICE BY EITHER PARTY**

**Other Terms and Conditions:**

A-B	A security deposit in the amount of \$2,685.00 is required prior to installation.
A	One (1) THREE CARD POKER® table game will be no charge for initial sixty (60) days, then \$495.00 per unit per month for the next two (2) months, then \$695.00 per unit per month for the next two (2) months, then \$895.00 per unit per month.
B	One (1) 6 CARD BONUS® side bet for THREE CARD POKER® table game will be no charge for initial sixty (60) days, then \$295.00 per unit per month.
A-B	6 CARD BONUS® side bet for THREE CARD POKER® table game includes signage, placard sign with holder, and dealer training.
A-B	Casino to supply layout.
B	6 CARD BONUS® side bet for THREE CARD POKER® table game is in addition to the monthly lease/license of THREE CARD POKER® table game.

Total Monthly Amount Lease Payments: US \$790.00

This agreement is pending approval based on Shuffle Master Inc.'s internal Credit and Collections Policy  
 Pricing reflected on this lease/license agreement is valid for a period of 30 days from the date of issue.  
 Payment terms: Net 30.

Approximate date of equipment delivery: Four (4) weeks upon receipt of signed Agreement.  
 Shipping: FOB Destination. \*Shipping/Handling, Taxes, and any applicable duties will be added to invoice.

This Agreement consists of the terms and conditions on pages 1 and 2 of this Agreement.

Customer Acceptance by (Print Name/Title):

DAVID CHELETTE / GM

Customer Authorized Signature:



Date:

6-26-11

Accepted by Shuffle Master, Inc., by: \_\_\_\_\_

Santa Ysabel ITCP, 1 6CB Lease 9-26-11



2 of 2 pages

1. The terms and conditions on this customer order are controlling, and may not be modified or expanded except in writing signed by Shuffle Master, Inc. ("SMI") and Customer.
2. If any legal action is commenced by either party against the other in connection with this Agreement the prevailing party shall be entitled to its costs and expenses including reasonable attorneys' fees, in addition to its other damages.
3. Customer will only use the products and equipment leased hereunder (the "Product") for lawful gaming purposes in accordance with the applicable rules, regulations, and laws of the controlling regulatory agency.
4. Except for any warranty expressly provided hereafter, NO WARRANTY FOR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTY (WHETHER EXPRESS, IMPLIED OR STATUTORY) IS MADE BY SMI.
5. SMI shall have no liability to Customer, nor any obligation under any indemnification or warranty set forth herein if:
  - (a) repair or replacement of any part, or any damages or loss of or to Customer, was caused by catastrophe, or by the fault, acts, omissions, or negligence of Customer or its employees, agents or customers;
  - (b) the Product is or has been modified in any manner without the prior written consent of SMI; or
  - (c) the Product shall not have been maintained or used in accordance with SMI's then applicable operating and/or maintenance manuals or other directions.
6. Subject to the terms and conditions of this Agreement, if applicable, SMI grants to Customer a non-exclusive license (without the right to sublicense) to use SMI's intellectual property directly related to the Product (the "SMI IP"), but only for approved use of the Product during the term of this Agreement and only for the game play method provided by SMI. Any alteration, modification or addition to the game play method of the Product without the prior written consent of SMI will result in the termination of the license granted herein. SMI's IP shall remain the sole and exclusive property of SMI.
7. In the event of a breach by one party, the non-breaching party may terminate this Agreement by giving the breaching party fifteen (15) days written notice thereof. If the breach is not cured in such fifteen (15) day period, at the non-breaching party's option, this Agreement will terminate. Either party may terminate this Agreement by giving the non-terminating party thirty (30) days written notice. Following termination, the Products will be returned to SMI in proper working order, normal wear and tear excepted.
8. Customer shall not make any modification to the Product, nor shall it remove or reproduce the Product or any EPROM or other part.
9. Products and related promotional materials that use any of the SMI IP may only be used in accordance with SMI's permitted use standards in effect from time to time.
10. Subject to Paragraphs 4 & 5 above and Customer's compliance with the terms hereof, SMI shall indemnify and hold Customer harmless against liability or expense (excluding any consequential damages such as lost profits) resulting from any claim or suit brought against Customer for infringement of a third party's intellectual property arising out of Customer's authorized use of Product. As a condition of SMI's indemnification obligation, Customer must:
  - a) Promptly notify SMI in writing of any such infringement claim or suit;
  - b) Allow SMI to have exclusive control of the defense of such infringement claim or suit including the selection of attorneys as well as exclusive control in all negotiations relating to settlement. Customer agrees to waive any conflict of interest it might have to the attorneys selected by SMI; and
  - c) Assist SMI as reasonably requested in the defense of such claim or suit.

In the event Customer modifies the Product, deviates from the approved use or form of the Product, or moves the Product, this indemnification will not apply to any claims based on or resulting from such modification, deviation or movement, and SMI shall not be liable for any damages related thereto.

11. Customer will bear the risk of loss for all Products in Customer's possession. Customer agrees to carry and keep in full force and effect an insurance policy, including property damage and public liability coverage, in an amount equal to the full current replacement value of the Product. SMI shall be named as Loss Payee and as an Additional Insured under said policy or policies, and said insurance may not be canceled without sixty (60) days advance written notice to SMI. Customer agrees to provide SMI a Certificate of Insurance evidencing said insurance coverage upon request from SMI.

1 of 2 pages

**Shuffle Master, Inc.**  
**License and Lease**  
**Agreement**

**ShuffleMaster™**  
 INCORPORATED  
 1106 Palms Airport Dr., Las Vegas, NV 89119  
 Phone: (702) 897-7150 Fax: (702) 897-2284

Contract Ref #: \_\_\_\_\_ Customer #: 107SANT002

Issue Date: January 14, 2010

**Casino Name:** Santa Ysabel Resort & Casino  
**Address:** 25575 Hwy 79  
**City, State, Zip:** Santa Ysabel, CA 92070  
**Contact Name:** Mike Bull  
**Title:** Table Games Manager  
**Contact Phone #:** 707-972-4329 (cell) Fax #: 760-230-2762

**Account Executive:**  
**Don Bauer**

**AE Phone:** (702) 270-5309  
**AE Cell:** (702) 525-5885  
**AE Fax:** (702) 897-2284

## Type of Action

Line Item	Qty	License/Lease	Product Description	Unit Price Monthly Rate	Extended Price Ext. Monthly Rate
A	1	Lease	iDEAL™ single deck specialty shuffler	\$695.00	\$695.00
B	1	Lease	iDEAL™ single deck specialty shuffler – <i>Back up</i>	No Charge	No Charge
C	2	Lease	ONE2SIX™ continuous shuffler	\$575.00	\$1,150.00
D	1	Lease	ONE2SIX™ continuous shuffler – <i>Back up</i>	No Charge	No Charge
E	3	Sale	Shuffler Installation Kit	\$90.00	No Charge

**\*PRODUCT LICENSE AND LEASE IS SUBJECT TO ALL TERMS AND CONDITIONS LISTED ON PAGES 1 & 2 OF THIS AGREEMENT**

**LEASES/LICENSES MAY ONLY BE TERMINATED WITH 30 DAYS WRITTEN NOTICE BY EITHER PARTY**

## Other Terms and Conditions:

2	Upon installation of the above listed equipment, two (2) MD-2® batch shufflers will be removed.

Total Monthly Amount Lease Payments: **US\$1,845.00**

This agreement is pending approval based on Shuffle Master Inc.'s internal Credit and Collections Policy  
 Pricing reflected on this lease/license agreement is valid for a period of 30 days from the date of issue.  
 Payment terms: due on receipt of invoice.

Approximate date of equipment delivery: Three (3) weeks upon receipt of signed Agreement.  
 Shipping: FOB Destination. \*Shipping/Handling, Taxes, and any applicable duties will be added to invoice.

This Agreement consists of the terms and conditions on pages 1 and 2 of this Agreement.

Customer Acceptance by (Print Name/Title)

Customer Authorized Signature:

Date:

Accepted by Shuffle Master, Inc., by: \_\_\_\_\_

Santa Ysabel 1 iDEAL, 2 126 lease agrmt 1-14-10 doc

**2 of 2 pages**

1. The terms and conditions on this customer order are controlling, and may not be modified or expanded except in writing signed by Shuffle Master, Inc. ("SMI") and Customer.
2. If any legal action is commenced by either party against the other in connection with this Agreement the prevailing party shall be entitled to its costs and expenses including reasonable attorneys' fees, in addition to its other damages.
3. Customer will only use the products and equipment leased hereunder (the "Product") for lawful gaming purposes in accordance with the applicable rules, regulations, and laws of the controlling regulatory agency.
4. Except for any warranty expressly provided hereafter, NO WARRANTY FOR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTY (WHETHER EXPRESS, IMPLIED OR STATUTORY) IS MADE BY SMI.
5. SMI shall have no liability to Customer, nor any obligation under any indemnification or warranty set forth herein if:
  - (a) repair or replacement of any part, or any damages or loss of or to Customer, was caused by catastrophe, or by the fault, acts, omissions, or negligence of Customer or its employees, agents or customers;
  - (b) the Product is or has been modified in any manner without the prior written consent of SMI; or
  - (c) the Product shall not have been maintained or used in accordance with SMI's then applicable operating and/or maintenance manuals or other directions.
6. Subject to the terms and conditions of this Agreement, if applicable, SMI grants to Customer a non-exclusive license (without the right to sublicense) to use SMI's intellectual property directly related to the Product (the "SMI IP"), but only for approved use of the Product during the term of this Agreement and only for the game play method provided by SMI. Any alteration, modification or addition to the game play method of the Product without the prior written consent of SMI will result in the termination of the license granted herein. SMI's IP shall remain the sole and exclusive property of SMI.
7. In the event of a breach by one party, the non-breaching party may terminate this Agreement by giving the breaching party fifteen (15) days written notice thereof. If the breach is not cured in such fifteen (15) day period, at the non-breaching party's option, this Agreement will terminate. Either party may terminate this Agreement by giving the non-terminating party thirty (30) days written notice. Following termination, the Products will be returned to SMI in proper working order, normal wear and tear excepted.
8. Customer shall not make any modification to the Product, nor shall it remove or reproduce the Product or any EPROM or other part.
9. Products and related promotional materials that use any of the SMI IP may only be used in accordance with SMI's permitted use standards in effect from time to time.
10. Subject to Paragraphs 4 & 5 above and Customer's compliance with the terms hereof, SMI shall indemnify and hold Customer harmless against liability or expense (excluding any consequential damages such as lost profits) resulting from any claim or suit brought against Customer for infringement of a third party's intellectual property arising out of Customer's authorized use of Product. As a condition of SMI's indemnification obligation, Customer must:
  - a) Promptly notify SMI in writing of any such infringement claim or suit;
  - b) Allow SMI to have exclusive control of the defense of such infringement claim or suit including the selection of attorneys as well as exclusive control in all negotiations relating to settlement. Customer agrees to waive any conflict of interest it might have to the attorneys selected by SMI; and
  - c) Assist SMI as reasonably requested in the defense of such claim or suit.

In the event Customer modifies the Product, deviates from the approved use or form of the Product, or moves the Product, this indemnification will not apply to any claims based on or resulting from such modification, deviation or movement, and SMI shall not be liable for any damages related thereto.

11. Customer will bear the risk of loss for all Products in Customer's possession. Customer agrees to carry and keep in full force and effect an insurance policy, including property damage and public liability coverage, in an amount equal to the full current replacement value of the Product. SMI shall be named as Loss Payee and as an Additional Insured under said policy or policies, and said insurance may not be canceled without sixty (60) days advance written notice to SMI. Customer agrees to provide SMI a Certificate of Insurance evidencing said insurance coverage upon request from SMI.



1 of 2 pages

**Shuffle Master, Inc.**  
**License and Lease**  
**Agreement**
**Shuffle Master**  
 INCORPORATED  
 1106 Palms Airport Dr., Las Vegas, NV 89119  
 Phone: (702) 897-7150 Fax: (702) 897-2284

Contract Ref #: \_\_\_\_\_ Customer #: 107SANT002

Issue Date: November 27, 2007

**Casino Name:** Santa Ysabel Resort & Casino  
**Address:** 25575 Hwy 79  
**City, State, Zip:** Santa Ysabel, CA 92070  
**Contact Name:** Phil Pepple  
**Title:** COO  
**Email:** philpepple@majesticgamingllc.com  
**Contact Phone #:** 520-971-1054 **Fax #:** 760-230-2762

**Account Executive:**  
**Nile Konicek**
**AE Phone:** (480) 641-6759  
**AE Cell:** (702) 767-6759  
**AE Fax:** (702) 897-2284

## Type of Action

Line Item	Qty	License/Lease	Product Description	Unit Price Monthly Rate	Extended Price Ext. Monthly Rate
A	1	License	LET IT RIDE BONUS® table game <i>No charge 30 days</i>	\$1,595.00	\$1,595.00
B	1	License	3 CARD BONUS® side bet for LET IT RIDE BONUS® table game	No Charge	No Charge
C	1	License	FORTUNE PAI GOW POKER® side bet <i>No charge 30 days</i>	\$595.00	\$595.00
D	1	Lease	PAI GOW DEALER DISPLAY	\$490.00	No Charge
E	2	Lease	ACE® single deck shuffler – <i>No charge 30 days</i>	\$605.00	\$1,210.00
F	2	Sale	Shuffler installation kit	\$90.00	No Charge

**\*PRODUCT LICENSE AND LEASE IS SUBJECT TO ALL TERMS AND CONDITIONS LISTED ON PAGES 1 & 2 OF THIS AGREEMENT**

**LEASES/LICENSES MAY ONLY BE TERMINATED WITH 30 DAYS WRITTEN NOTICE BY EITHER PARTY**  
**Other Terms and Conditions:**

A-C	Table game lease includes initial layout, signage and dealer training. LET IT RIDE BONUS® table lease includes LET IT RIDE BONUS® Table and Computer. 3 Card Bonus® Side Bet for Let It Ride® table game includes layout, placard sign, and holder at no charge.
A,C	One (1) LET IT RIDE BONUS® table game is at no charge for initial thirty (30) days from installation, then \$1,595.00 per month for six (6) months, then \$1,995.00 per month. One (1) FORTUNE PAI GOW POKER® side bet is at no charge for initial thirty (30) days from installation, then \$595.00 per month for six (6) months, then \$775.00 per month.
E	Two (2) ACE® shufflers are at no charge for initial thirty (30) days from installation, then \$605.00 per unit per month.
A-C	An approval letter from your Tribal Commission for LET IT RIDE BONUS® table game, 3 CARD BONUS® and FORTUNE PAI GOW POKER® side bets will be required prior to shipment and installation of equipment.

Total Monthly Amount Lease Payments: **US\$3,400.00**

This agreement is pending approval based on Shuffle Master Inc.'s internal Credit and Collections Policy

Pricing reflected on this lease/license agreement is valid for a period of 30 days from the date of issue.

Payment terms: due on receipt of invoice.

Approximate date of equipment delivery: Three (3) weeks upon receipt of signed Agreement.

Shipping: FOB Shipping Point (Las Vegas). \*Shipping/Handling, Taxes, and any applicable duties will be added to invoice.

This Agreement consists of the terms and conditions on pages 1 and 2 of this Agreement.

Customer Acceptance by (Print Name/Title):

PHIL PEPPE / GM

Customer Authorized Signature:

[Signature]

Date:

12-5-07

Accepted by Shuffle Master, Inc., by: \_\_\_\_\_

Santa Ysabel 1 LIRB-3CB, FPGP, 2 ACE lease agmt 11-26-07

2 of 2 pages

1. The terms and conditions on this customer order are controlling, and may not be modified or expanded except in writing signed by Shuffle Master, Inc. ("SMI") and Customer.
2. If any legal action is commenced by either party against the other in connection with this Agreement the prevailing party shall be entitled to its costs and expenses including reasonable attorneys' fees, in addition to its other damages.
3. Customer will only use the products and equipment leased hereunder (the "Product") for lawful gaming purposes in accordance with the applicable rules, regulations, and laws of the controlling regulatory agency.
4. Except for any warranty expressly provided hereafter, NO WARRANTY FOR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHER WARRANTY (WHETHER EXPRESS, IMPLIED OR STATUTORY) IS MADE BY SMI.
5. SMI shall have no liability to Customer, nor any obligation under any indemnification or warranty set forth herein if:
  - (a) repair or replacement of any part, or any damages or loss of or to Customer, was caused by catastrophe, or by the fault, acts, omissions, or negligence of Customer or its employees, agents or customers;
  - (b) the Product is or has been modified in any manner without the prior written consent of SMI; or
  - (c) the Product shall not have been maintained or used in accordance with SMI's then applicable operating and/or maintenance manuals or other directions.
6. Subject to the terms and conditions of this Agreement, if applicable, SMI grants to Customer a non-exclusive license (without the right to sublicense) to use SMI's intellectual property directly related to the Product (the "SMI IP"), but only for approved use of the Product during the term of this Agreement and only for the game play method provided by SMI. Any alteration, modification or addition to the game play method of the Product without the prior written consent of SMI will result in the termination of the license granted herein. SMI's IP shall remain the sole and exclusive property of SMI.
7. In the event of a breach by one party, the non-breaching party may terminate this Agreement by giving the breaching party fifteen (15) days written notice thereof. If the breach is not cured in such fifteen (15) day period, at the non-breaching party's option, this Agreement will terminate. Either party may terminate this Agreement by giving the non-terminating party thirty (30) days written notice. Following termination, the Products will be returned to SMI in proper working order, normal wear and tear excepted.
8. Customer shall not make any modification to the Product, nor shall it remove or reproduce the Product or any EPROM or other part.
9. Products and related promotional materials that use any of the SMI IP may only be used in accordance with SMI's permitted use standards in effect from time to time.
10. Subject to Paragraphs 4 & 5 above and Customer's compliance with the terms hereof, SMI shall indemnify and hold Customer harmless against liability or expense (excluding any consequential damages such as lost profits) resulting from any claim or suit brought against Customer for infringement of a third party's intellectual property arising out of Customer's authorized use of Product. As a condition of SMI's indemnification obligation, Customer must:
  - a) Promptly notify SMI in writing of any such infringement claim or suit;
  - b) Allow SMI to have exclusive control of the defense of such infringement claim or suit including the selection of attorneys as well as exclusive control in all negotiations relating to settlement. Customer agrees to waive any conflict of interest it might have to the attorneys selected by SMI; and
  - c) Assist SMI as reasonably requested in the defense of such claim or suit.

In the event Customer modifies the Product, deviates from the approved use or form of the Product, or moves the Product, this indemnification will not apply to any claims based on or resulting from such modification, deviation or movement, and SMI shall not be liable for any damages related thereto.

11. Customer will bear the risk of loss for all Products in Customer's possession. Customer agrees to carry and keep in full force and effect an insurance policy, including property damage and public liability coverage, in an amount equal to the full current replacement value of the Product. SMI shall be named as Loss Payee and as an Additional Insured under said policy or policies, and said insurance may not be canceled without sixty (60) days advance written notice to SMI. Customer agrees to provide SMI a Certificate of Insurance evidencing said insurance coverage upon request from SMI.





# Customer Care Maintenance Agreement

**Sharp Business Systems**  
8670 Argent St  
San Jose, CA 95071  
(P) 619-258-1400 (F) 619-449-2005

Customer Bill To	
Customer Name <b>Santa Ysabel Resort &amp; Casino</b>	
Mailing Address <b>P.O. Box 600</b>	
City <b>Santa Ysabel</b>	Zip <b>CA 92070</b>
Billing Contact <b>Chuck Bauman</b>	
Phone <b>(760) 787-0909</b>	Fax <b>(760) 787-2239</b>
e-mail <b>cbauman@thesyrc.com</b>	

Customer Location	
Customer Location/Department Name <b>One MX-B402 @ Gaming Commission</b>	
Location Address <b>25575 HWY 79</b>	
Physical Location Description <b>School House Road by Tribal</b>	
City <b>Santa Ysabel</b>	Zip <b>CA 92070</b>
Key Contact <b>Donavan Durbin</b>	
Phone <b>(760) 787-0909</b>	Fax
e-mail <b>ddurbin@thesyrc.com</b>	
Meter Contact	
Phone	Fax
e-mail <b>ddurbin@thesyrc.com</b>	

**THIS AGREEMENT SHALL NOT BE EFFECTIVE UNLESS SIGNED BY THE CUSTOMER AND SBS CONTRACT MANAGEMENT**  
Maintenance Agreement contracts are non-refundable, non-transferable, and non-cancelable where applicable, price does not include tax.  
Sharp Business Systems is a division of Sharp Electronics Corporation

Sharp Authorization

Date

Equipment Covered Model	Serial Number	ID Number	Start Meter
MX-3610N			
Model or Meter	Serial Number	ID Number	Start Meter
MX-M453N			
Model or Meter	Serial Number	ID Number	Start Meter
MX-B402			
Model or Meter	Serial Number	ID Number	Start Meter
MX-B402			
Model or Meter	Serial Number	ID Number	Start Meter
MX-B402			
Model or Meter	Serial Number	ID Number	Start Meter
MX-B402			
Model or Meter	Serial Number	ID Number	Start Meter

Agreement Enrollment	Parts	Drums	B Toner	C Toner	Developer	Staples	Fuser Oil
Labor	Yes	Yes	Yes	Yes	Yes	No	Yes

Start Date
install

Detail of Charges	
Base Charge	Check 1 Maintenance Charges are part of Lease Payment
\$ 525.69	
Base Charge Frequency	Meter Frequency
Quarterly	Quarterly
Meter Allowance 1	Aggregate
17,700	No
Meter Allowance 2	Consolidate
Zero min	No
Meter Allowance 3	
Excess Charge 1	Term (Months)
\$ 0.0099	12
Excess Charge 2	
\$ 0.0945	
Excess Charge 3	Master Contract Number

Authorizations	
Comments	
Authorizing Contract Number	
Purchase Order Number	
<input checked="" type="checkbox"/> I have read and understand our obligations under the terms and conditions stated herein, and on the reverse side thereof, as the only agreement pertaining to the equipment hereunder. No other agreements apply unless expressly noted on the face of this agreement or in the contracts specified above. I understand all meter counts are based on 8 X 11 (minimum) single sided images unless otherwise noted.	
<input type="checkbox"/> Customer has declined maintenance coverage at this time. The customer understands obtaining maintenance coverage later may incur charges in addition to the normal maintenance charges and has been informed as to the current time and material billing rates.	
Print Name	
CHARLES M Bauman	
Customer Signature	7/21/11



## SCENTAIR ENVIRONMENTAL SCENT SERVICE AGREEMENT HVAC DIFFUSION

Date of Agreement 2/21/2012 Installation/Initial Shipment Date ("Effective Date") \_\_\_\_\_  
 Subscriber Name Santa Ysabel Casino Note: Agreement term commences upon the install or initial shipment date

Subscriber Address ("Serviced Premises") Billing Address ☒ Same as Subscriber Address  
 Address 25575 Hwy. 70 Address \_\_\_\_\_  
 City Santa Ysabel State CA Zip 92079 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone 760-787-0909 ext. 208 Telephone \_\_\_\_\_  
 Facsimile \_\_\_\_\_ Facsimile \_\_\_\_\_  
 Email dchelette@theysc.com Email \_\_\_\_\_  
 Contact Name David Chelette Contact Name \_\_\_\_\_

### 1. SERVICES

During the term of this Agreement, ScentAir Technologies, Inc. ("ScentAir") agrees to provide to the Subscriber, at the Serviced Premises, the following HVAC diffused environmental scent service by ScentAir™ (the "Service"). The Service provides the equipment necessary to diffuse aroma through the properties existing ventilation system. On-going consumable fragrance materials (the "Aroma") shall be sent directly to the Serviced Premises unless otherwise stipulated in writing. Subscriber requests the following fragrance schedule:

	System #1	System #2	System #3	System #4	System #5	System #6
Location						
Fragrance Number						
Fragrance Description						
	System #7	System #8	System #9	System #10	System #11	System #12
Location						
Fragrance Number						
Fragrance Description						

### 2. EQUIPMENT

ScentAir™ ambient diffusion systems (hereinafter, the "ScentAir Equipment") shall be installed or at the Subscriber's option ScentAir shall continue to operate any existing Subscriber owned diffusion equipment (hereinafter "Existing Equipment"). Subscriber shall have the continuous use of any such ScentAir Equipment for the term of this agreement; however such ScentAir Equipment shall remain the property of ScentAir unless otherwise purchased pursuant to the terms of a separate Purchase Agreement. The fee for such ScentAir Equipment purchase shall be listed below in Section 3a

### 3. FEES

In consideration of the Service and Equipment to be provided as set forth above, Subscriber shall pay ScentAir as follows:

- A recurring Monthly Service and Equipment charge of \$700.00 based on a total of 2 - triple nozzle ScentAir Equipment systems at a price of \$350.00 per system, payable as provided below.
  - A one-time equipment installation charge of \$1000.00.
  - A one-time enclosure equipment cost/purchase of \$400.00.
- b. Recurring charges shall be payable in advance: X monthly, \_\_\_\_\_ quarterly, \_\_\_\_\_ annually.

### 4. TERM

This Agreement shall remain in effect for an initial term of thirty-six (36) months from the Effective Date and shall be automatically renewed on month to month terms thereafter. Either party hereto may cancel the automatic renewal provisions of this Section by providing written notice to the other party at least ninety (90) days prior to the expiration of the initial or any subsequent term. Cancellation of service acceptable after minimum of 12 mos. of service is completed with written notice (90) days in advance.

### 5. PROVISION OF EQUIPMENT

Subscriber hereby grants to ScentAir the right to install all necessary ScentAir Equipment for receiving the Service. Subscriber shall be solely responsible for obtaining any third party approvals for the installation of such ScentAir Equipment and for all costs associated therewith. Subscriber shall not, directly or indirectly, sell, mortgage, pledge, or otherwise dispose of or encumber any ScentAir Equipment provided hereunder. Subscriber shall adequately insure ScentAir Equipment against damage or loss and present evidence of such insurance to ScentAir upon request, and shall, upon expiration or earlier termination of this Agreement, promptly return to ScentAir all such ScentAir Equipment in good condition (or pay the full replacement value thereof). Upon removal of the ScentAir Equipment, ScentAir shall not be required to repair, replace or otherwise re-establish the Serviced Premises to their original condition.

**8. MAINTENANCE AND CARE OF EQUIPMENT**

ScentAir shall maintain the ScentAir Equipment during the term of this agreement. ScentAir will also provide maintenance on Subscriber-owned Existing Equipment, upon request, and Subscriber shall pay ScentAir's then current repair charge rates. ScentAir's maintenance obligations under this Section 8 shall be exclusively limited to those resulting from Subscriber's ordinary and proper use of the ScentAir-owned Equipment. Should ScentAir at its sole discretion determine it is unable, impractical or cost prohibitive to repair any Existing Equipment, ScentAir will install comparable ScentAir Equipment at the Serviced Premises. Such ScentAir Equipment shall remain in place for the duration of this agreement and any subsequent renewal term. Maintenance of Existing Equipment not specifically required to be performed by ScentAir shall be the responsibility of Subscriber, and should Subscriber request service from ScentAir in such instances, Subscriber shall pay ScentAir's then current repair charge rates. ScentAir's obligations under this Section are in lieu of all other warranties, express or implied relating to the Equipment, including implied warranties of merchantability and fitness for a particular purpose. Except for ScentAir's maintenance obligations as set forth herein, Subscriber shall indemnify ScentAir and hold it harmless from and against any and all losses, claims, and expenses relating to the Equipment provided hereunder to Subscriber, including without limitation, losses caused by accidental fire, theft, or misuse of the Equipment. Subscriber shall provide adequate electrical outlets and power for the Equipment.

**7. OTHER CHARGES AND FEES**

- a. Subscriber shall pay any sales, use, excise, or other taxes or governmental charges (except income taxes) arising under this Agreement.
- b. Unless otherwise specified, all charges and fees due are payable in advance of the billing term of this Agreement. Late payments of fees and charges due hereunder are subject to interest charges not to exceed the maximum rate permitted by law.
- c. All shipments of Aroma shall be F.O.B. ScentAir's distribution facility.
- d. ScentAir reserves the right to increase the monthly service and equipment charges to Subscriber, such increase not to exceed ten (10) percent in a one year period.

**9. INTERRUPTION OF SERVICE**

ScentAir shall not be liable for any failure or interruption of the Service due to acts of God, strikes, power failures, emergencies, governmental action, action or inaction by the Subscriber, its employees, agents, invitees or any other cause beyond ScentAir's control.

**10. SALE OR CHANGE OF SUBSCRIBER'S BUSINESS**

Sale, transfer, closure or change in location of Subscriber's business by the Subscriber herein designated shall not reduce, eliminate or otherwise affect its obligation under this Agreement. This Agreement may not be assigned by Subscriber without the prior written consent of ScentAir, which shall not be unreasonably withheld. ScentAir, in its sole discretion, may assign the Agreement without the consent of Subscriber.

**11. OWNERSHIP OF EQUIPMENT**

Unless otherwise stipulated in a separate purchase agreement, Subscriber acquires no ownership, title, property rights or interest in or to the ScentAir Equipment, but acquires only the right of use in accordance with the provisions of this Agreement. Subscriber hereby irrevocably appoints ScentAir, and/or its agents and assigns, as Subscriber's true and lawful attorney (and agent-in-fact) with power to execute, endorse the name of Subscriber upon and/or file any financing statements, certificates of title, affidavits, notices and similar instruments to reflect, as ScentAir deems appropriate, ScentAir's, and/or its assigns, ownership interest in the ScentAir Equipment.

**12. REMEDIES UPON SUBSCRIBER DEFAULT**

Default in payment or violation of any terms of this Agreement by Subscriber shall cause the entire contract balance, including past due amounts, to become immediately due and payable to ScentAir as liquidated damages. In the event of such default or violation, ScentAir shall have the right without notice to enter the Serviced Premises of Subscriber and remove the Equipment and any Aroma and discontinue the Service. If ScentAir is required to bring legal action to enforce the terms of this Agreement, all such legal fees and related costs incurred in connection with such action shall be borne by the Subscriber.

**13. GENERAL**

This Agreement constitutes the sole and entire understanding between parties with respect to the subject matter hereof and supersedes all prior conversations, representations, promises whether verbal or written. No modification of this Agreement shall be valid unless made in writing and signed by each party. The provisions of this Agreement are severable; if any clause or provision shall be held invalid or unenforceable, in whole or in part, then such invalidity shall attach only to such clause or provision, or part thereof, and shall not affect any other clause or provision. The person executing this Agreement on behalf of Subscriber represents or warrants that he or she has the power and authority to sign this Agreement on behalf of Subscriber.

This Agreement shall become binding on the parties hereto when signed by Subscriber and accepted and approved by ScentAir.

ScentAir Technologies, Inc.

Account Executive Signature - Accepted

Print Name

Vanessa Lindbeck  
Manager's Signature - Approved

Subscriber

SANTA YSABEL CASINO  
Company Name


  
Authorized Signature

DAVID CHELETTE  
Print Name

GM  
Title

3-1-12  
Date

Agreement #: 5660016681

A  Sempra Energy utility®

**San Diego Gas & Electric Company Standard Service Agreement for Labor and/or Services**

<b>PROJECT:</b>	<b>Food and Beverage Services</b>	<i>MAIL ORIGINAL INVOICE TO</i>
<b>CONTRACTOR:</b>	<b>Santa Ysabel Resort and Casino</b>	<b>San Diego Gas &amp; Electric Company</b>
	21975 Highway 79	<b>ACCOUNTS PAYABLE</b>
	Santa Ysabel, CA 92070	<b>P.O. BOX 129007</b>
		<b>San Diego, CA - 92112</b>

This Standard Service Agreement ("Agreement") is made effective as of 9/21/2009 between San Diego Gas & Electric Company ("Company") and Santa Ysabel Resort and Casino ("Contractor").

The Parties hereby agree as follows:

**SCOPE**

Contractor shall perform, at its own proper cost and expense, in the most substantial and skillful manner, to the satisfaction of Company, the following generally described services ("Services"):

Contractor shall provide all food and beverages for breakfast, lunch and dinner meals. Food Service will be provided throughout the duration of Company's staging on Iipay Nation Property as more fully described in Schedule A – SCOPE OF SERVICES AND PRICING.

**PROJECT LOCATION**

Santa Ysabel Resort & Casino, Santa Ysabel, CA

**AUTHORIZED REPRESENTATIVES**

Company designates the individual or individuals named below as Company Representatives for all matters relating to the performance of the Services. The actions taken by the Company Representatives shall be deemed acts of the Company. Company may at any time upon written notice to Contractor change the designated Company Representative.

Company Representative: John Ritter and/or Don Burrus

Contractor designates the individual or individuals named below as Contractor Representative for all matters relating to the performance of Services. The actions taken by Contractor Representative shall be deemed acts of Contractor. Contractor Representative or designated superintendent shall be at the jobsite at all times during the Services. Contractor may at any time upon written notice to Company change the designated Contractor



Agreement #: 5660016681

Representative.

Contractor Representative: Barbara Levin

**COMPENSATION**

Contractor shall be compensated for the Services at the rates set forth below in an amount Not-To-Exceed ("NTE") \$75,000.00. Contractor shall notify Company in writing when the costs incurred under this Agreement based upon this Compensation Article equal ninety percent (90%) of \$75,000.00. Company will not be required to pay Contractor for the Services more than the NTE price unless and until, at Company's sole option, Company elects in writing to increase the NTE price of the Agreement.

Contractor hereby agrees to accept as full compensation for satisfactory performance of the Services as stated in Schedule A – SCOPE OF SERVICES AND PRICING.

**COMMENCEMENT AND COMPLETION OF SERVICES**

This Agreement shall commence as of 9/21/2009 and shall be in full force and effect through 1/31/2010, unless terminated earlier by Company or Contractor in accordance with the terms of this Agreement. Contractor agrees to commence and perform the Services in accordance with the requests of Company Representative identified herein. The nature of the Services is such that timely performance is critical to the orderly progress of related work and to the operating schedule of Company.

**NON-ELECTRONIC INVOICING INSTRUCTIONS**

Contractor shall invoice Company in accordance with the Compensation Schedule. All invoices submitted shall reference the Standard Service Agreement Number and have complete support documentation of all charges incurred, including any data required to calculate fees or variable rate changes, plus support documentation for any authorized reimbursable expenses by category.

**ELECTRONIC INVOICING INSTRUCTIONS**

Upon request of Company, Contractor shall be required to submit invoices electronically. If necessary, Company shall train Contractor's staff and provide necessary support for an electronic invoicing application. Additionally, Company shall provide secure access to Company's electronic invoicing network. Upon implementation of this system, Contractor shall be required to use the electronic invoicing system for all applicable invoices. Electronic invoicing shall not require electronic payment.

**EVALUATED RECEIPT SETTLEMENT (ERS) INSTRUCTIONS**

Contractor shall, upon request of Company, be compensated via Evaluated Receipt Settlement (ERS). In an ERS transaction, invoicing by Supplier shall not be required on certain orders.

**PAYMENT**

Company shall make payment Net 10 Days after receipt and approval of an undisputed invoice to the following address or to the address on each Release, if applicable:

**PAYMENT METHODS**

At no additional cost, Company shall make payment through check, credit card, or wire transfer protocol.



Agreement #: 5660016681

**COMPLETE AGREEMENT**

This Agreement, including all Schedules attached hereto and which are incorporated by reference, constitutes the complete and entire Agreement between the parties and supersedes any previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. There are no additions to, or deletions from, or changes in, any of the provisions hereof, and no understandings, representations or agreements concerning any of the same, which are not expressed herein. **THE PARTIES HEREBY AGREE THAT NO TRADE USAGE; PRIOR COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT SHALL BE A PART OF THIS AGREEMENT OR SHALL BE USED IN THE INTERPRETATION OR CONSTRUCTION OF THIS AGREEMENT.** The following Schedules are attached hereto and incorporated herein by this reference:

**SCHEDULE A - SCOPE OF SERVICES AND PRICING**

IN WITNESS WHEREOF, the parties have executed this Agreement as of 9/21/2009.

San Diego Gas & Electric Company, a  
California corporation

Santa Ysabel Resort and Casino

By: \_\_\_\_\_  
Name: Kristen A. LaBazzo

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

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

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

Agreement #: 5660016681

**SCHEDULE A – SCOPE OF SERVICES AND PRICING**

Santa Ysabel Casino (SYRC) shall provide food service for SDG&E emergency staging operations. Food Service will be provided throughout the duration of SDG&E's staging on Iipay Nation Property:

1. Santa Ysabel Casino will provide all food and beverages for breakfast, lunch and dinner meals.
  - a. The location where meals will be served will be determined by the number of SDG&E employees that require food service during specific meal period.
    - i. For groups of 12 or less, meals will be provided in The Orchard Restaurant.
    - ii. For groups of 13 or more, meals will be provided catering style in the Volcan meeting room.
      1. Upon SDG&E's request, boxed meals and beverages will be delivered out to staging site as necessary.
  - b. All tables, chairs, labor and equipment relating to preparing and serving meals will be provided for meals that are served on Santa Ysabel Casino property.
  - c. All paper/plastic products will be certified "recyclable" and will be made from recycled products with high post consumer, recyclable and or reusable content as per SDG&E's requirements.
  - d. All meals will be prepared in The Orchard Restaurant and will follow San Diego County Environment Health Department food safety guidelines.
2. Breakfast Meal will include Protein, Starch, Vegetable, Fruit and Beverage.
  - a. Each breakfast will be \$9.00 per person
    - i. \$6.00 meal
    - ii. \$2.00 beverage (Juice & Milk or Coffee)
    - iii. \$1.00 Fruit

<b>Country Breakfast</b> Scrambled Eggs with Bacon or Sausage served with Country Fried Potatoes and Toast. Served with Fruit Salad	<b>Sunrise Breakfast Sandwich</b> Fried Eggs, American Cheese and Bacon served on Grilled Sourdough Bread with Country Fried Potatoes Served with Fruit	<b>Chilaquilles</b> Scrambled Eggs with Tortilla Chips drenched in Ranchero Sauce served with Spanish Rice and Refried Beans. Served with
<b>Santa Ysabel Scramble</b> Buttermilk Biscuits topped with Eggs Scrambled with Ham and Country Fried Potatoes, smothered with Country Gravy Served with Fruit Salad	<b>Breakfast Burrito</b> Flour Tortilla stuffed with Scrambled Eggs, Cheese, Country Fried Potatoes, Sausage or Bacon served with Refried Beans and Spanish Rice Served with Fruit Salad	

3. Lunch meal will include Protein, Starch, Dessert and Beverage
  - a. Each Lunch meal will be \$11.00 per person

Agreement #: 5660016681

- i. \$8.00 meal
- ii. \$2.00 beverages (Soft Drink, Iced Tea & Milk or Coffee)
- iii. \$1.00 dessert

<b>BBQ Pork Sandwich</b> Pulled Pork in a Rich BBQ Sauce on a Potato Bun served with Potato Salad, Black Bean Salad or Coleslaw Served with a Fresh Baked Cookie	<b>Deli Sandwich</b> Sliced Ham, Turkey or Roast Beef and Sliced Cheese on assorted Sliced Bread with Lettuce, Tomato, Onion, and Mayonnaise served with Potato Salad, Black Bean Salad or Coleslaw. Served with a Walnut Brownie	<b>Ortega Chicken Sandwich</b> Grilled Chicken Breast topped with a Mild Green Chili and Swiss Cheese on a French Roll with Chipotle Mayonnaise, Lettuce, Tomato and Onion. Served with a Fresh Baked Cookie
------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>Carne Asada</b> Grilled Carne Asada served with Spanish Rice, Refried Beans, Salsa, Sour Cream, Flour Tortillas and a Dessert	<b>Cheese Burger</b> 1/3 Lb Burger topped with cheese served on a Potato Bun with Lettuce, Tomato, Onion with Potato Salad, Black Bean Salad or Coleslaw. Served with Dessert
-------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4. Dinner Meal will include Protein, Starch, Vegetable, Salad, Dessert and Beverage
- a. Each Dinner meal will be \$13.00 per person
    - i. \$10.00 meal
    - ii. \$2.00 beverages (Soft Drink, Iced Tea & Milk or Coffee)
    - iii. \$1.00 dessert

<b>BBQ Chicken</b> BBQ Chicken served Seasonal Vegetable and Rice Pilaf. Served with Garden Salad and Dessert	<b>Pot Roast</b> Pot Roast served with seasonal Vegetables, Mashed Potatoes and Gravy. Served with Garden Salad and Dessert	<b>Spaghetti &amp; Meatballs</b> Spaghetti & Meatballs served with Seasonal Vegetables. Served with Caesar Salad, Garlic Bread and Dessert
<b>Beef or Chicken Fajitas</b> Beef or Chicken grilled with Bell Peppers and Onions served with Spanish Rice, Refried Beans, Salsa, Sour Cream, Flour Tortillas and a Dessert		<b>Beef Stroganoff</b> Sliced Beef with Sliced Mushrooms in a Creamy Peppery Sauce served over Pasta with Seasonal Vegetables and Dessert

5. Santa Ysabel Casino will provide snacks and beverages "on site."
- a. Daily par of snacks and beverages will be provided to SDG&E's Emergency Staging site.
  - b. Any changes in par will be conveyed to SYRC's Food and Beverage Department to meet the needs of SDG&E's employees.
  - c. Snacks & Beverages may include but are not limited to, bottled water, Gatorade, juice drinks, energy bars and fresh whole fruit.
    - i. \$2.00 Bottled Beverages – Snapple, Gatorade

Agreement #: 5660016681

- ii. \$3.00 Energy Drinks – Red Bull
- iii. \$1.00 Bottled Water
- iv. \$1.00 Fresh Whole Fruit
- v. \$1.50 Snack Bars
- vi. Recyclable cups will be provided to Emergency Staging site.
  - 1. \$55.00 per case
    - a. 10 ounce recyclable cups / 1500 per case
- d. Santa Ysabel Casino will provide ice bins for beverages
- e. SDG&E will provide tables and chairs for Emergency Staging Site.
- 6. SDG&E will supply trash receptacles on staging site.
  - a. SDG&E will be responsible for removal of all trash on staging site.
- 7. SDG&E will provide a contact person to advise SYRC of daily food service needs.
- 8. Billing
  - a. SDG&E will be billed on a weekly basis.
    - i. Billing week is Sunday through Saturday
    - ii. Bills will be itemized with daily items including snacks and meals.
    - iii. Payment is due 10 days after receipt



**SPANISH 21 / MATCH THE DEALER - UP & DOWN CARD - LICENSE AGREEMENT**

AGREEMENT made this 9 day of June, 2010, by and between Santa Ysabel Casino ("Licensee"), with its principal place of business at Santa Ysabel Resort Casino and Masque Publishing, Inc. ("Licensor") with its principal place of business at 8400 Park Meadows Drive, Lone Tree Colorado 80124. This Agreement supersedes and terminates any other agreement between the parties regarding the subject matter hereof.

WHEREAS, Licensor exclusively controls or owns the rights to certain intellectual property that may or may not include one or more of patents, trademarks and copyrights relating to the use of the Spanish 21 game and Match The Dealer game or feature, and Licensee desires to license such Spanish 21 game with Match The Dealer game or feature on the terms and pursuant to the conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties hereto agree as follows:

1. Licensee agrees to pay a set up fee of \$500.00 current license fee of \$500.00 per game (1 table) per month, on a month-to-month basis. Licensee acknowledges and agrees that it is licensing \_\_\_\_ table(s). The license fee is due and payable monthly, in advance for each license period (which is defined as one month) at the first of each month.
2. Licensee agrees to offer such game including Match The Dealer game or feature in the form, and conduct play according to the rules, supplied by Licensor. Licensee also agrees to use an approved Spanish 21 game layout with Match The Dealer game or feature, a rule and a lighted sign.
3. Licensee shall use the trademarks identified as Spanish 21 and Match The Dealer only in association with such game that meet or exceed the specifications, know-how and technical data supplied or otherwise made available by Licensor to Licensee or in accordance with such other standards relating to the character or quality of such game as Licensor may prescribe to Licensee or approve from time to time. Licensor may from time to time provide instructions to Licensee as to the proper usage of the Spanish 21 and Match The Dealer trademarks including the legends to be used in conjunction with the Spanish 21 and Match The Dealer trademarks and patterns and examples of such use. Licensee shall only use the Spanish 21 and Match The Dealer trademarks in accordance with such instructions. Licensee agrees that proper notification of the licensing of the Spanish 21 and Match The Dealer trademarks will accompany each such usage, with such notification indicating that the trademarks are under license from Licensor.
4. Licensee hereby acknowledges the validity of Licensor's full and exclusive rights in and to the Spanish 21 and Match The Dealer trademarks as well as Licensor's ownership thereof. Licensee shall not, except as provided in this Agreement, acquire any rights in or to the Spanish 21 and Match The Dealer trademarks by reason of Licensee's use thereof and Licensee shall not attempt to obtain any trademark registrations for these marks. Licensee hereby waives and disclaims any right to use the Spanish 21 and Match The Dealer trademarks beyond the limited rights specifically granted herein. Any and all trademark rights in connection with the use of Spanish 21 and Match The Dealer trademarks by Licensee are hereby assigned to Licensor and shall inure to the benefit of Licensor. Licensee shall take such actions and shall execute all documents as may be reasonably requested by Licensor at any time to record, perfect or establish Licensor's exclusive rights in and ownership of the Spanish 21 and Match The Dealer trademarks.
5. Either party may terminate the Agreement in any calendar month by giving written notice to the other. If said notice is given on or before the 15th calendar day of a month, the termination is effective at the end of the current calendar month, otherwise termination is effective at the end of the ensuing calendar month.
6. Licensee shall supply the table upon which to play such licensed game, a standard blackjack table works best. Licensee shall also supply subsequent quantities of handout rule cards.
7. Licensor shall make available a Spanish 21 game/Match The Dealer game or feature rule sign, lighted table sign and an initial quantity of hand-out rule cards for each game that is licensed. If equipment requires replacement, Licensee shall pay the replacement costs. Upon termination, signs supplied by Licensor shall be returned to Licensor by Licensee.
8. Licensor has the right to change the license fee. Regarding any such change, Licensor will provide Licensee with written notice of the new license fee. Unless Licensee terminates this Agreement by giving written notice to Licensor within thirty (30) days of receiving notice of such change, the new license fee becomes effective starting with the first calendar month following the end of the thirty (30) day period.

IN WITNESS WHEREOF, the parties have signed this Agreement as set out below.

Licensee

By: [Signature]

Name: Don Trimble

Title: Gen. Mgr

Masque Publishing, Inc. - Licensor

By: [Signature]

Name: Donna Adam

Title: Director of Gaming



kelly@odds on promotions . com



SPORTS AUTOMOTIVE RETAIL MEDIA DIRECT MAIL

## PROMOTIONAL PRIZE REIMBURSEMENT CONTRACT

CONTRACT #: 06597 SALESMAN: BRK CONTRACT DATE: June 28, 2011 CONTRACT FEE: \$6,830.00  
 CLIENT NAME: Santa Ysabel Casino Attn: Tisha Brown  
 TELEPHONE: 760-787-2225 EMAIL: tbrown@thesyrc.com  
 ADDRESS: 25575 Hwy 79, Santa Ysabel, CA 92070

TYPE OF PROMOTION: Lucky Guess – Envelopes – Ten (10) Graduating Prize Levels – Three (3) Envelopes Per Level  
 PROMOTION DATES: Saturdays 08/06/11-08/27/11  
 NUMBER OF CONTESTANTS PER PROMOTION DATE: Ten (10)  
 TOTAL NUMBER OF CONTESTANTS: Forty (40)  
 MAXIMUM PRIZE LIMIT: \$50,000.00  
 MAXIMUM AGGREGATE PRIZE LIMIT THIS CONTRACT: \$57,500.00 [ONE (1) WINNER PER INSURED PRIZE ONLY]  
 LOCATION OF PROMOTION: Santa Ysabel Casino

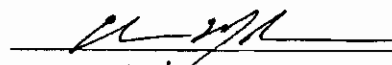
COMMENT: Please read contract terms & conditions carefully, thank you. Brent Kelly  
 INCLUDED IN CONTRACT FEE: 8' x 4' custom game board, security envelopes for each contestant, and standard shipping

1. This contract is issued to the above named Client for the sole benefit of said Client. Upon execution by Odds On Promotions (OOP), Client will become a member of the International Hole In One Association d.b.a. OOP, a full-service promotions company and purchasing group operating pursuant to the Liability Risk Retention Act of 1986, and be issued Confirmation of Participation in our Promotional Prize Reimbursement Program. The performance of OOP's prize reimbursement obligations under this Contract is insured through the Practorian Insurance Company under Policy #GC99800001.
2. A signed contract, order form and valid payment must be received by OOP FOURTEEN (14) DAYS PRIOR to the start of the promotion to avoid rush shipping & handling charges. OOP is not obligated to reimburse the Client for a prize absent a signed contract and/or timely and valid payment. **IMPORTANT: Insurance agents act exclusively on behalf of the Client and not on behalf of OOP.**
3. OOP's liability is limited to the lesser of the maximum aggregate prize value stated in this contract or the actual amount payable by the Client to the Winner(s) of the promotion, provided that the Client and such Winner(s) have complied with the terms and conditions of this contract and the official rules of the promotion. The terms and conditions of this contract will control in the event of any inconsistencies.
4. Client agrees to prepare and post official promotion rules, which must reflect the terms and conditions of this contract including but not limited to OOP's right to use the Winner(s) name and likeness for promotional purposes without further notice or compensation.
5. Exhibit(s) "A & B" (Contract Terms and Conditions) is/are an integral part of this contract and shall remain in effect during the term of the contract.
6. In the event that the actual conditions of the promotion are materially different from those represented by the Client, OOP shall incur no liability unless such changes are approved in writing by OOP prior to the commencement of the promotion.
7. **OOP is not a party to, or involved in, the conduct or implementation of the promotion. Client agrees to protect, indemnify, and hold harmless OOP from any and all claims made due to the conduct or implementation of the promotion, which in any way is inconsistent with the terms and conditions of this contract.**
8. This contract, including exhibits and attachments, represents the entire final agreement between the Client and OOP and supersedes any prior agreements either oral or written. Any modifications hereto must be in writing and signed by both parties.

**PAYMENT TO BIND CONTRACT**  
 (MUST BE RECEIVED PRIOR TO COMMENCEMENT OF PROMOTION)

☐ CHECK ENCLOSED☐ OOP TITANIUM ACCOUNT☐ CHARGE TO CREDIT CARD #: \_\_\_\_\_ EXPIRATION DATE: \_\_\_\_\_☐ MASTERCARD☐ VISA☐ AMERICAN EXPRESS

NAME ON CARD: \_\_\_\_\_ AUTHORIZED AMOUNT \$: \_\_\_\_\_  
 (PLEASE PRINT)

CLIENT SIGNATURE: \_\_\_\_\_ OOP:   
 DATE: \_\_\_\_\_ DATE: 7/5/11

**SIGN AND RETURN ONE COPY OF THE CONTRACT WITH PAYMENT. ANY PRIZE REIMBURSEMENT PROVIDED WILL BE BASED UPON THE TERMS AND CONDITIONS FOUND IN EXHIBIT(S) "A & B" OF THIS CONTRACT, ALL OF WHICH CLIENT ACKNOWLEDGES TO HAVE READ, UNDERSTAND, AND WILLING TO ABIDE BY.**



SPORTS AUTOMOTIVE RETAIL MEDIA DIRECT MAIL

## EXHIBIT "A" - CONTRACT TERMS AND CONDITIONS

Lucky Guess - Envelopes - Prize Levels

Contract # 06597

Contingent upon full compliance with these Contract Terms, ODDS ON PROMOTIONS (OOP) hereby agrees to reimburse the Client named on the Contract up to the specified maximum prize value if an eligible contestant successfully completes the said promotion on the date(s) and at the location specified. The rights and obligations of the parties to the Contract are exclusive to the contracting parties, may not be assigned, transferred, or delegated, and are not intended to create any third-party beneficiary rights for any contestant in the promotion.

## A. BEFORE PROMOTION

- OOP shall provide Client with Thirty (30) sealed and uniquely numbered contest envelopes (Three [3] per prize level) and One (1) master envelope containing the pre-selected winning contest envelope numbers for each contestant.
- OOP will randomly choose twenty (20) contestants out of forty (40) to be stuffed with Prize Matrix #1, nineteen (19) contestants out of forty (40) to be stuffed with Prize Matrix #2, and one (1) contestant out of forty (40) to be stuffed with Prize Matrix #3. See Exhibit "B" for each prize matrix's information. See Master Envelopes for Prize Matrix distribution for contestants (DO NOT OPEN A MASTER ENVELOPE IF THERE IS AN INSURED PRIZE WINNER, MUST BE RETURNED TO OOP UNOPENED).
- OOP warrants the accuracy of the envelope parameters listed in Exhibit "B" below.
- Promotion contestants must be selected as follows: Random as approved by OOP.
- Current or former employees, family members, agents, successors, or assignees of the client or any promotional agency involved with this promotion shall be **INELIGIBLE** to participate.

## B. DURING PROMOTION

- Two client representatives must supervise the event and are responsible for the contestants understanding of the terms and conditions of this promotion.
- The promotion must be conducted as follows. Each contestant must select ONE (1) contest envelope from LEVEL 1. If the envelope selected in Level 1 contains the message "HOTTER", or similar message, the contestant may select ONE (1) contest envelope from LEVEL 2. If the envelope selected in Levels 1-8 (see Exhibit "B") contains a Client insured prize or message, the contestant wins that prize or message, and the promotion is over for that contestant. This process must continue in ascending order through each prize level until the contestant has either selected One (1) envelope containing a Client insured prize or message, OR the contestant has selected Eight (8) or Nine (9) envelopes containing the message "HOTTER", or similar message, AND an envelope containing insured prize of either \$2,500, \$5,000 or \$50,000. Once an insured prize has been selected, the turn is over for that contestant.
- In order to qualify for prize reimbursement, an eligible contestant must select the contest envelope containing the message "HOTTER", or similar message, in prize levels One (1) through Eight (8) or Nine (9), and the contest envelope containing the insured prize in levels Nine (9) or Ten (10).
- IMPORTANT:** Opening more than ONE (1) contest envelope at any level or the master envelope corresponding to a potential winning contestant will cause the claim to be denied.
- In the event a contestant selects the correct sequence of envelopes to warrant an insured prize claim as described above, Client must return all remaining **unopened** envelopes and the **unopened** Master Envelope corresponding to that contestant to OOP for claims verification. If the Master Envelope or any of the remaining non-selected envelopes have been opened, the claim will be denied and no prize shall be awarded.
- SCHEDULE OF CONTEST ENVELOPE #S PER CONTESTANT:**

	Contestant #1	Contestant #2	Contestant #3	Contestant #4	Contestant #5
CONTEST ENVELOPE #S	P219600-P219571	P219570-P219541	P219540-P219511	P219510-P219501 P219400-P219381	P219380-P219351
MASTER ENVELOPE #	ME022913	ME022912	ME022911	ME022910	ME022909
	Contestant #6	Contestant #7	Contestant #8	Contestant #9	Contestant #10
CONTEST ENVELOPE #S	P219350-P219321	P219320-P219291	P219290-P219261	P219260-P219231	P219230-P219201
MASTER ENVELOPE #	ME022908	ME022907	ME022906	ME022905	ME022904
	Contestant #11	Contestant #12	Contestant #13	Contestant #14	Contestant #15
CONTEST ENVELOPE #S	P219200-P219171	P219170-P219141	P219140-P219111	P219110-P219081	P219080-P219051
MASTER ENVELOPE #	ME022903	ME022902	ME022901	ME022900	ME022899
	Contestant #16	Contestant #17	Contestant #18	Contestant #19	Contestant #20
CONTEST ENVELOPE #S	P219050-P219021	P219020-P218991	P218990-P218961	P218960-P218931	P218930-P218901
MASTER ENVELOPE #	ME022898	ME022897	ME022896	ME022895	ME022894
	Contestant #21	Contestant #22	Contestant #23	Contestant #24	Contestant #25
CONTEST ENVELOPE #S	P218900-P218871	P218870-P218841	P218840-P218811	P218810-P218781	P218780-P218751
MASTER ENVELOPE #	ME022893	ME023404	ME023403	ME023402	ME023401

I HAVE READ THE TERMS AND CONDITIONS OF THIS CONTRACT AND AGREE TO ABIDE BY EACH ITEM CONTAINED HEREIN.

CLIENT SIGNATURE: [Signature] TITLE: CONTROLLER DATE: 7/5/11A DIVISION OF  
HOLE IN ONE INTERNATIONAL

6195 Ridgeview Ct., Suite D • Reno, NV 89519 • 775-828-4671 • 888-827-2249 • Fax 775-828-6013 • www.oddsongpromotions.com



SPORTS AUTOMOTIVE RETAIL MEDIA DIRECT MAIL

## EXHIBIT "A" - CONTRACT TERMS AND CONDITIONS (Cont.)

Lucky Guess - Envelopes - Prize Levels  
Contract # 06597

	Contestant #26	Contestant #27	Contestant #28	Contestant #29	Contestant #30
CONTEST ENVELOPE #'S	P218750-P218721	P218720-P218701 P218400-P218391	P218600-P218571	P218570-P218541	P218540-P218511
MASTER ENVELOPE #	ME023400	ME023399	ME023389	ME023388	ME023387
	Contestant #31	Contestant #32	Contestant #33	Contestant #34	Contestant #35
CONTEST ENVELOPE #'S	P218510-P218481	P218480-P218451	P218450-P218421	P218420-P218401 P218376-P218367	P218366-P218337
MASTER ENVELOPE #	ME023386	ME023385	ME023384	ME023383	ME023382
	Contestant #36	Contestant #37	Contestant #38	Contestant #39	Contestant #40
CONTEST ENVELOPE #'S	P218312-P218283	P218282-P218253	P218252-P218223	P218222-P218193	P218192-P218176 P211020-P211008
MASTER ENVELOPE #	ME023381	ME023380	ME023379	ME023378	ME023377

## C. AFTER PROMOTION

1. Claims notification: Immediate telephone notice by client to the claims department of OOP will be reported no later than the first business day after the promotion.
2. Proof of Claim: The following items and completed documentation must be furnished to OOP as proof of a prize claim (forms furnished by OOP): (a) Affidavits of two Promotion Officials; (b) Affidavit of Winner; (c) all UNOPENED contest envelopes corresponding to the winning contestant, and (d) the corresponding UNOPENED master envelope.
3. Investigation: Upon receipt of Proof of Claim, OOP may conduct a reasonable investigation including but not limited to requiring the client to produce the Winner, and/or Promotion Officials for polygraph examination as a condition to payment of the claim if, in the sole opinion of OOP such an examination is warranted by the facts.
4. Choice of Law, Disputed Claims, Venue, and Attorney's Fees - This contract shall be interpreted under laws of the State of Nevada. Any dispute between the client and OOP or its underwriters shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association and pursuant to the provisions of the Nevada Uniform Arbitration Act. The venue for such arbitration shall be in Washoe County, Nevada. If for any reason there is litigation between the client and OOP or its underwriters, the exclusive jurisdiction and venue for such litigation is a state district court in Washoe County, Nevada. The client agrees to pay OOP and its underwriters' reasonable attorney's fees and expenses associated with any such arbitration or litigation in the event OOP or its underwriters successfully prosecute and/or defend any such arbitration or litigation. The rights and obligations of the parties to this contract are exclusive to the contracting parties. The parties do not intend to create any third-party beneficiary rights for any particular contestant(s) in the promotional event to which this contract applies.

## D. VARIABLE PROMOTION CONDITIONS

1. Any changes in specific promotion rules or data such as promotion dates, promotion location, number of participants, prize values, etc. REQUIRE NOTIFICATION AND APPROVAL OF OOP PRIOR TO THE START OF THE EVENT. AFTER NORMAL BUSINESS HOURS, ALL CHANGES ARE REQUIRED IN WRITING VIA FAX (775-828-6013) OR EMAIL (changes@oddsonpromotions.com). Any contract fee adjustment will be billed to the client after the event.
2. If the promotion is canceled due to a force majeure, which prevents the conducting of the event, assuming no attempts to win the prize were initiated, a full refund, less a \$150.00 cancellation fee will be made. This contract may be amended to a rescheduled date without additional charges.

I HAVE READ THE TERMS AND CONDITIONS OF THIS CONTRACT AND AGREE TO ABIDE BY EACH ITEM CONTAINED HEREIN.

CLIENT SIGNATURE: [Signature] TITLE: Controller DATE: 7/5/11A DIVISION OF  
HOLE IN ONE INTERNATIONAL

6195 Ridgeview Ct., Suite D \* Reno, NV 89519 \* 775-828-4671 \* 888-827-2249 \* Fax 775-828-6013 \* www.oddsonpromotions.com



SPORTS AUTOMOTIVE RETAIL MEDIA DIRECT MAIL

## EXHIBIT "B" - CONTRACT TERMS AND CONDITIONS

Lucky Guess - Envelopes - Prize Levels

Contract # O6597

\*\*\*Schedule of Prize Matrixes to be distributed randomly amongst the Forty (40) contestants per Exhibit "A", A-2 above.

Prize Matrix #1			
Level 10	\$5,000 OOP Insured	\$5,000 OOP Insured	\$50,000 OOP Insured
Level 9	\$2,500 OOP Insured	\$2,500 OOP Insured	HOTTER
Level 8	\$800 Client Insured	\$800 Client Insured	HOTTER
Level 7	\$600 Client Insured	\$600 Client Insured	HOTTER
Level 6	\$400 Client Insured	\$400 Client Insured	HOTTER
Level 5	\$300 Client Insured	\$300 Client Insured	HOTTER
Level 4	\$200 Client Insured	\$200 Client Insured	HOTTER
Level 3	\$100 Client Insured	\$100 Client Insured	HOTTER
Level 2	\$75 Client Insured	\$75 Client Insured	HOTTER
Level 1	\$50 Client Insured	\$50 Client Insured	HOTTER

Prize Matrix #2			
Level 10	\$5,000 OOP Insured	\$5,000 OOP Insured	\$50,000 OOP Insured
Level 9	\$2,500 OOP Insured	\$2,500 OOP Insured	HOTTER
Level 8	\$800 Client Insured	\$800 Client Insured	HOTTER
Level 7	\$600 Client Insured	\$600 Client Insured	HOTTER
Level 6	\$400 Client Insured	\$400 Client Insured	HOTTER
Level 5	\$300 Client Insured	\$300 Client Insured	HOTTER
Level 4	\$200 Client Insured	\$200 Client Insured	HOTTER
Level 3	\$100 Client Insured	\$100 Client Insured	HOTTER
Level 2	HOTTER	HOTTER	HOTTER
Level 1	HOTTER	HOTTER	HOTTER

Prize Matrix #3			
Level 10	\$5,000 OOP Insured	\$5,000 OOP Insured	\$50,000 OOP Insured
Level 9	\$2,500 OOP Insured	\$2,500 OOP Insured	HOTTER
Level 8	\$800 Client Insured	\$800 Client Insured	HOTTER
Level 7	\$600 Client Insured	\$600 Client Insured	HOTTER
Level 6	\$400 Client Insured	\$400 Client Insured	HOTTER
Level 5	\$300 Client Insured	\$300 Client Insured	HOTTER
Level 4	HOTTER	HOTTER	HOTTER
Level 3	HOTTER	HOTTER	HOTTER
Level 2	HOTTER	HOTTER	HOTTER
Level 1	HOTTER	HOTTER	HOTTER

I HAVE READ THE TERMS AND CONDITIONS OF THIS CONTRACT AND AGREE TO ABIDE BY EACH ITEM CONTAINED HEREIN.

CLIENT SIGNATURE: [Signature] TITLE: CONTROLLER DATE: 7/5/11A DIVISION OF  
HOLE IN ONE INTERNATIONAL

6195 Ridgeview Ct., Suite D \* Reno, NV 89519 \* 775-828-4671 \* 888-827-2249 \* Fax 775-828-6013 \* www.oddsonpromotions.com





# LUCKY ENVELOPES

**Odds On Promotions (OOP) will provide you with the Security Envelopes needed to run your promotion. To prevent rush shipping and handling charges - this form, a signed contract, and payment must be returned to OOP AT LEAST 14 DAYS PRIOR to the event.**

**1**

Please print or type all information.

**SHIP TO**
☐ Residence ☒ Business

Contract #

TISHA

Brown

First Name

Last Name

SANTA YSABEL CASINO

Company (if applicable)

25575 Hwy 79

Shipping Address (No P.O. Boxes)

Apt/Suite

SANTA YSABEL

City

CA

92070

State

Zip

760 787 0909

Daytime Phone Number (with area code)

tbrown@hbsync.com

Email (for shipping notification)

**EXPRESS SHIPPING & HANDLING CHARGES**
☒ 14 Days (FREE)

☐ <14 Days (ADD \$50)

**Odds On**  
PROMOTIONS

888.827.2249 www.oddsonpromotions.com

6195 Ridgeview Court, Suite D | Reno, NV 89519  
775.828.6013 fax



This license agreement is entered into by **National Table Games (N.T.G.) A Louisiana Corporation**, hereinafter "licensor" and **Santa Ysabel Casino** hereinafter "licensee".

### **Article 1 - Definitions**

**1-1 "Omaha Poker Challenge"** means the **Omaha Poker Challenge** table game (Game) protected by United States Patent and Property Rights.

**1-2 "Patent and Property rights"** shall include but not limited to:

- a) The table game "**Omaha Poker Challenge**"
- b) U.S. Patent Application number 60/870,972 Filed **December 20, 2007**, and International Patent Application number **PCT/US07/88181** Filed **December 19, 2007** titled "Omaha Poker Challenge";
- c) All copyrights held by licensor to the game, its design, layout, markings, rules, instructions, advertising, promotional material, and instructions for play;
- d) The game design and trademarks; and,
- e) All goodwill associated with the Game, the copyrights, trade names, trademarks and patents.

**1-3 "Unit"** shall mean a single Game layout.

### **Article 2 - Grant**

**2-1** Licensor warrants that licensor owns the Patent and Property Rights in and to the Game. Licensor hereby grants to Licensee, and Licensee hereby accepts, subject to the terms and conditions set forth in this License Agreement, a non-exclusive license for the term of this Agreement (without the right to sublicense) under the Patent and Proprietary Rights for all uses related to for offering to it's patrons the casino table game (non-video) version of the Game, as provided to Licensee by Licensor for use at it's premises located at \_\_\_\_\_, provided that, and only to the extent that, Licensee pays all license fees and prize winnings due to be paid under this License Agreement. Subject to the grant of license herein to Licensee, the Patent and Proprietary Rights of the Game shall remain the sole and exclusive property of the Licensor.

### **Article 3 - Payment**

**3-1** one unit shall be provided on **March 1, 2009**. A Free Trial will be provided for the first (2) Two month of the contract date above.

\_\_\_\_\_  
Licensor

  
\_\_\_\_\_  
Licensee

**3-2** Licensee agrees to pay **Seven Hundred Ninety Five Dollars and 00/100 (\$795.00)** per unit, per month for the term of this agreement. All payments are due on the first day of each month.

Send payment to:

**National Table Games (N.T.G.)  
3501 Severn Ave. Suite 16  
Metairie, LA 70002**

#### **Article 4 - General Obligations of Licensee**

**4-1** Licensee shall conduct the Game at its premises in accordance with the rules and regulations of the Game, the Licensor's approved pay table and all regulations of the State of **California**.

**4-2** Licensee is responsible for and will pay all prizes/winnings for the Game in accordance with the pay table approved by the State of **California**.

**4-3** Licensee shall provide all surveillance equipment.

**4-4** Licensee shall provide all intra-property power and communication lines for material and equipment provided by Licensor.

#### **Article 5 - General Obligations of Licensor**

**5-1** Licensor shall provide the Unit, Game brochures and one **(1)** Edge Lit Table sign to market the Game.

#### **Article 6 - Term and Termination**

**6-1** This License Agreement is for a **One Year** term of Agreement beginning on the date in section 3-1.

**6-2** Either party, at its sole discretion, may terminate this License Agreement for one of the following reasons listed below but not limited to, by giving a Thirty Day (30) written notice to the other party. In the event of termination, Licensee will pay the remainder of the contract but not to exceed 3 months;

- a) If either party fails to perform any of its obligations hereunder and fails to cure such non-performance within fifteen **(15)** days from the date the other party sends written notice of default to the non-performing party (all obligations of licensee hereunder are considered essential and material);

\_\_\_\_\_  
Licensor

  
\_\_\_\_\_  
Licensee

- b) If either party takes any action or fails to take action which, in the sole discretion of the other party, jeopardizes any of the party's licenses and/or approvals from the State of **California**, or any other gaming jurisdiction, and fails to correct such action within fifteen (15) days of the other party's written notification describing such action or inaction; or continued relationship with the other party jeopardizes any license a Party has or may be seeking in the United States or any foreign country.

**6-3** In the event Licensee Terminates this License Agreement in writing with a thirty day (30) notice, it shall remove all layouts and materials bearing the Trademark and shall cease play of the game of the Patent and Trademark and return all trade mark material bearing the name of the game and Company to NTG. Licensee will be responsible for all costs of returning all equipment to N.T.G. within thirty days (30) after the last day the game was offered on the gaming floor. The termination of this License Agreement shall not prejudice any rights or remedies that shall have accrued to the other Party prior to the date of such termination.

#### **Article 7 - Marketing**

**7-1** Licensee shall mark each Unit of the Game and product literature and any advertisements for the Game in a manner that reflects Licensor's ownership of all intellectual property rights associated with the Game. All such marking and advertisements must be approved by licensor in writing prior to their public display or use.

Licensor hereby grants Licensee a nonexclusive, perpetual license to use the Trademarks in connection with the use and promotion of the Game. All promotional materials shall indicate that the Trademarks are used under license from Licensor and that the Game is a trademark of Licensor.

#### **Article 8 - Intellectual Property Indemnification**

**8-1** In the event any third party makes any claim that Licensee is infringing on another person's or entity's patent as a result of participation on the Game, then, and in that event, Licensor shall indemnify and hold Licensee harmless against all liability or expense resulting from any such claim or suit brought against Licensee for Infringement of Proprietary Rights or Patent Rights arising out of or relating to the Game, but excluding any direct or consequential damages such as lost profits. Licensee agrees:

- a) To inform Licensor within fifteen (15) business days in writing of its actual receipt of written notice of the claim of any such infringement claim or infringement suit.

\_\_\_\_\_  
Licensor

  
\_\_\_\_\_  
Licensee

- b) That if Licenser accepts the defense and indemnity of the claim or suit without a reservation of any rights, Licensee will allow Licenser reasonable control of the defense of such infringement claim or suit, including the selection of attorneys, as well as exclusive control in all negotiations relating to its settlement. Licenser will not settle any such claim without Licensee's consent, unless Licensee receives a full release of any such claim.
- c) To assist Licenser as reasonably requested by Licenser in the prosecution of the defense of such claim or suit at no cost to licensee.

If licenser does not accept Licensee's request for defense and indemnity within fourteen (14) days of being notified of such claim, Licensee will be allowed to defend itself with counsel of its own choosing until such time as Licenser accepts such defense. If Licenser refuses to defend and indemnify Licensee, in addition to all other remedies available to Licensee, Licensee will be entitled to recover its costs and reasonable attorney fees from Licenser.

**8-2** Licenser and Licensee shall defend, indemnify and hold the other, its respective agents, employees, successors, and assigns harmless from and against all losses, damages, injuries, claims, demands, and expenses, arising out of the acts or omissions of the other agents and employees related to or associated with the Game.

#### **Article 9 - Remedies**

**9-1** In the event either party takes any action to correct or remedy a breach by the other, shall bear its own attorneys fees and costs, and shall not be entitled to recover such costs and fees from the other party hereto.

#### **Article 10 - General Provisions**

**10-1** In the performance of this License Agreement, Licenser and Licensee shall comply with all applicable laws and rules, regulations, and determinations of all relevant governments and agencies. Each Party will indemnify and save harmless the other Party from all liability and responsibility whatsoever which may now or hereafter be asserted by reason of any failure on the part of the first party or any of its employees to comply with all such laws, rules, regulations and determinations

**10-2** Licensee shall not make any reproduction of or any modifications to the Unit(s), material and equipment provided under this License Agreement without the Licenser's prior written consent.

\_\_\_\_\_  
Licenser

  
\_\_\_\_\_  
Licensee



**10-3** Any notices provided or required for by the terms of this License Agreement shall be in writing, and shall be sent by either facsimile transmission or by first-class mail, postage prepaid, to the business address of the Party to be given notice. Either Party may change its business address by notice to the other Party. Notices shall be deemed received by the Party to whom the notice is given on the day it is actually received or, in the case of mailing, on the third business day following the day it is deposited in first class mail postage prepaid to the business address of the Party to whom notice is been given.

**10-4** Both Parties and/or its employees are not to be considered under this Agreement or any other Agreement between the Parties hereto as having any employee or agent status of the other. Neither Party has any authority to act for any other Party as an agent, partner, or joint venture as a result of this Agreement. Neither has the authority whatsoever to bind the other to any other Agreements, promises, or undertakings.

This Agreement shall not be construed as creating or constituting a partnership or joint venture between any of the Parties.

**10-5** Licensor and Licensee represent and warrant that during the term of the Agreement, they will procure and keep valid all necessary business licenses or other permits or approvals.

**10-6** Licensor represents and warrants that the **Omaha Poker Challenge** Table Game has all requisite gaming regulatory approvals from the State of **California**.

**10-7** This Agreement contains the entire Agreement between the Parties and there are no other promises or conditions in any other agreement, whether oral or written. This Agreement supersedes any prior oral or written agreements.

**10-8** This Agreement may not be modified or amended except in writing, executed by both Parties.

**10-9** If any of the provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court of competent jurisdiction finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provisions it would become valid and enforceable, then such provision shall be deemed written, construed and enforced as so limited.

**10-10** The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of the Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

\_\_\_\_\_  
Licensor

  
\_\_\_\_\_  
Licensee



**10-11** This Agreement shall be governed by the laws of the State of **Louisiana**. The Parties agree that the appropriate Court of the State of **Louisiana** shall have jurisdiction in any action brought to enforce any of the terms and conditions of this Agreement.

**10-12** The prevailing Party in any dispute arising out of this Agreement shall be entitled to an award of costs and reasonable attorney fees.

**10-13** This Agreement may not be assigned by either Party except in writing, signed by all Parties.

**10-14** As a holder of a privileged gaming license by the State of **California**, both are required to adhere to strict laws and regulations regarding vendor and other business relationships. If, at any time, either Party determines, at its sole discretion, that the other Party its principals, or any key employees violate any applicable statutes and regulations regarding prohibited relationships with gaming companies, the other Party shall immediately terminate this Agreement.

**10-15** Licensor has or agrees to acquire all necessary licenses by all applicable federal, state and local gaming authorities, if required. If any person or entity connected with this Agreement is found unsuitable by the **California** Gaming Commission, or if either is advised by the **California** Gaming Commission to terminate its relationship with such person or entity, or if either determines, in good faith, that it would be in the best interest to terminate its relationship with such person or entity in order to protect its applicable license, either shall be allowed to immediately terminate the relationship with said person or entity without liability to the other Party.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be affective as of the last date set forth below.

All information in this contract is to be held Private and confidential.

**Licensor:**

**National Table Games (N.T.G.)**  
**A Louisiana Corporation**  
**Metairie, LA 70002**

**Licensee:**

**Santa Ysabel Casino**  
**25575 Hwy 79**  
**Santa Ysabel, CA 92070**

\_\_\_\_\_  
**T. Christian Anthony Schlumbrecht**  
**President and CEO**

**Date:** \_\_\_\_\_

**Name:** Sandra Smith

**Signed:** 

**Title:** 4/7/09 CEO

**Date:** 4/7/09

with John O'Neill's  
Acting CEO's  
permission

9/2008 11:40 7507888327

RAE

PAGE 02



Company Name: Santa Ysabel Casino  
 Mailing Address: P.O. Box 600  
 Phone Number: 760-787-0409 FAX 760-787-2239  
 Accounts Payable Contact: Rose Gess  
 Authorized Individuals: Travel and Tourism Dept.

Are Purchase Orders Required? ☒ yes ☐ no

In consideration of the extension of credit by RAE to Applicant and by signing this Application, Applicant agrees to the following terms and conditions:

1. Upon approval of this application, RAE, in its sole discretion and notwithstanding any request of the Applicant, shall have the right to increase, decrease, or terminate Applicant's credit privileges under this Application at any time without prior notice to Applicant, except as otherwise provided by law.
2. All purchases by Applicant of goods and services from RAE will be made in accordance with the terms and conditions(a) in this Application and(b) in any invoices or other documents evidencing Applicant's obligations to RAE(together or separately "Future Documents"). Applicant agrees that RAE in its sole discretion may change these terms and conditions at any time. If there is a conflict in the terms and conditions in this application and the terms and conditions in any Future Documents, the terms and conditions in the Future Documents shall control.
3. Applicant agrees to pay all charges for goods and services acquired from RAE according to the payment terms in each invoice. The entire outstanding balance due to RAE on all invoices shall become due in full immediately upon default in the payment of any invoice.
4. Applicant agrees to pay interest on any past due payment at the rate of 1 1/2% per month, or the highest rate permitted by law, whichever is less.
5. To the maximum extent allowed by law, upon Applicant's default in payment or other obligation to RAE, Applicant agrees to pay all RAE's costs of collection and all costs of RAE's exercise of its rights regarding its collateral, if any, including, with limitation, reasonable attorneys' fees and court costs.
6. This Application and all transactions between the Applicant and RAE shall be governed by the law of the State of California.
7. In the event of any controversy or claim arising out of or relating to this application, any credit extended by RAE to Applicant or any other issue arising out of the relationship between Applicant and RAE, Applicant consents to the jurisdiction of any state or federal court in the state of California. Applicant waives personal service of process upon it and consents that all service of process be made by registered or certified mail directed to it at the address in this application and that service so made shall be deemed to be completed five(5) days after the same shall have been posted to the undersigned's address. Applicant waives any right it may have to change the venue of any litigation brought against it by RAE in accordance with this paragraph. Applicant waives any right to trial by jury.
8. Notwithstanding anything to the contrary in the foregoing paragraph. Applicant and RAE hereby agree that except for RAE's collection of amounts past due from Applicant or RAE's exercise of its rights regarding its collateral, if any, either Applicant or RAE may require the other party to arbitrate any controversy or claim arising out of or relating to(a) this Application(b) any credit extended by RAE to Applicant or (c) any other issues related to this application or any credit extended by RAE to Applicant. If RAE or Applicant chooses arbitration, such controversy or claim shall be arbitrated by the American Arbitration Association in accordance with its Commercial Arbitration rules and any judgement or award rendered in connection therewith shall be entered in any court having jurisdiction thereof. Applicant and RAE agree to equally share all costs and expenses in connection with the arbitration, including, but not limited to arbitrator's fees and administration fees, except that Applicant and RAE shall each pay their own attorney's fees.

Applicant hereby certified that the information furnished under this Application and any other financial statements furnished in connection therewith, is true and correct and that this information is being furnished to RAE for the purposes of inducing RAE to extend credit to Applicant. Applicant understands that RAE intends to rely upon such information. Applicant understands and agrees to be bound by any forms in this Application and in all invoices or other documents regarding Applicant's obligation to RAE. Applicant further agrees to advise RAE of any material changes in the information provided herein, including but not limited to change of Applicant's ownership, address or telephone.

Applicant understands that RAE will retain the Application whether or not it is approved.

APPLICANT HEREBY AUTHORIZES RAE TO(1)OBTAIN CREDIT INFORMATION ON APPLICANT FROM ANY CREDIT REPORTING AGENCY OR OTHER ENTITY THAT REPORTS ON CREDIT HISTORY OR FINANCIAL CONDITIONS(2)TO CHECK APPLICANT'S CREDIT HISTORY AND PRINCIPAL SUPPLIERS, TRADE CREDITORS AND BANK REFERENCES FOR CUSTOMARY CREDIT INFORMATION,(3)TO CONFIRM THE INFORMATION CONTAINED ON THIS APPLICATION INCLUDING BUT NOT LIMITED TO SENDING A COPY HEREOF TO THE PRINCIPAL SUPPLIERS AND BANK REFERENCE LISTED ON THIS APPLICATION, AND(4)TO RELEASE INFORMATION TO OTHER CREDITORS REGARDING APPLICANT'S CREDIT EXPERIENCE WITH RAE.

Authorized Agent: Sandra Smith Title: CFO  
 Signature: [Signature] Date: 11/19/08



PO BOX 3062, Dana Point, CA 92629  
Call 888.770.9866 or Fax to 949.388.3696  
Questions: ADVERTISING@QUICKTHROTTLE.COM

## ADVERTISING AGREEMENT

Edition CALIFORNIA

NAME OF BUSINESS SANTA YSABEL CASINO

ADDRESS 25575 HWY 79

CITY SANTA YSABEL STATE CA ZIP 92070

PHONE 760-787-2201 FAX 76-765-0929 E-MAIL bradwohl@msn.com

Effective this date \_\_\_\_\_ Quick Throttle Magazine, or its assigns, is hereby authorized to advertise for the undersigned the following program:

Size of AD 1/2 Color(Apr) Full Color (May) Monthly Cost of AD \$600 April/ \$950 May

Length of Agreement: Starting Ad in the Month of APRIL 2009 and Ending with the Month of MAY 2009 Total Number of Insertions: 2 (TWO)

Amount Paid on this Date: Check#: \_\_\_\_\_ Visa/Mastercard \_\_\_\_\_ Exp. \_\_\_\_\_

Balance Due on Contact & Payment Schedule: Pmts for ads due at time of each ad submission

NAME & TITLE: (Please Print) Donna Dornin, Director of operations

SIGNATURE [Signature]

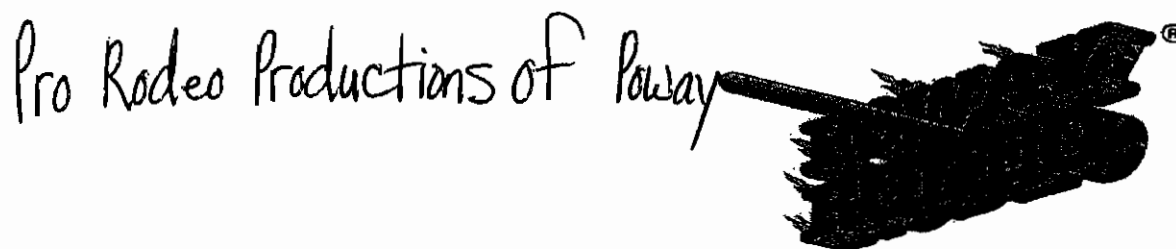
QUICK THROTTLE REP. SIGNATURE Randy Twells cell 760-802-7978; H.Ofc Fax 619-449-8996

### SPECIAL INSTRUCTIONS AND LAYOUT INFORMATION:

Client to supply print ready ad timely for publication deadlines per specs supplied in Media Kit. Any changes to ad by QT will only be made on client request at discretion of QT, if ad artwork is in editable format, and if changes can be made in sufficient time prior to deadline. Deadline is 12<sup>th</sup> of each month for the following months' issue.

THANK YOU FOR PARTNERING WITH QUICK THROTTLE MAGAZINE!





"A Brand Above the Rest"

February 19, 2008

Melissa Pico & Myra Deluna  
Santa Ysabel Resort & Casino  
21979 Highway 79  
Santa Ysabel, CA. 92070

Dear Missy and Myra:

We are pleased to present our proposal for sponsorship of the 2008 - 2010 Annual Poway Coors Rodeo.

As we discussed, your three (3) year sponsorship in the amount of \$25,000.00, to be dispersed in 2008 - \$5,000.00, 2009 - \$10,000.00 and 2010 - \$10,000.00 is for the following:

- Exclusivity as Poway Rodeo's only casino sponsor for 2008, 2009, 2010 and as long as Santa Ysabel Resort & Casino remains a major sponsor
- Logo displayed on both side panels (4' x 6') of the electronic scoreboard
- Mention during up to 30 KSON Poway Rodeo radio advertisements on same basis as other Poway Rodeo Advance Ticket Sale outlet locations
- Logo with coupon on 14,585 Poway Rodeo tickets
- ¼ page ad with coupon in Rancho magazine as Major Poway Rodeo Sponsor sent to 350,000 households in Poway, Rancho Bernardo and Penasquitas area
- ¼ page ad with coupon in Poway Rodeo program handed out free as Major Poway Rodeo Sponsor at the Poway Rodeo
- Flashing logo on Poway Rodeo website linked to Santa Ysabel Casino & Resort website
- Scrolling logo on electronic scoreboard and message concerning shuttle service to Casino several times prior to, during and after Poway Rodeo Performances
- Mention by Rodeo announcer during the three performances at least three times each performance
- Sponsor flag carried during Sponsor Opening/Closing ceremonies all three performances
- 3' x 8' banners, supplied by the Casino, placed on the back of north and south bleachers

- Sponsorship acknowledgement at Poway Rodeo Dance after Friday and Saturday Performances
- 48 Preferred Seating tickets (16 per performance)
- 48 General Admission tickets (16 per performance)
- Tie in with the Poway Rodeo float during the Community Days parade and at Community Days events in the park to be detailed in September as float is designed
- Two banners displayed at the Rodeo Trail Ride
- Acknowledgement as Poway Rodeo Sponsor on roadside signs and window posters
- 10' x 20' Vendor booth
- Check to be presented to Pro Rodeo Productions of Poway, Inc. by Chairman during the Saturday night performance (not during intermission)

*P.O. 533*

Your 2008 check for \$5,000.00 is requested upon acceptance, checks for 2009 and 2010 payable no later than August 1, 2009 and 2010. Please make check payable to Pro Rodeo Productions of Poway, Inc.

**POSTED**  
4/23/08

Poway Rodeo BBQ event covered under separate agreement.

Thank you, again, for supporting Poway Rodeo. Please feel free to contact me with any questions or comments you may have regarding your sponsorship.

Sincerely,

---

Nancy Kirchhofer, Chairman  
Pro Rodeo Productions of Poway, Inc.

*M Pico 3/26/08*  
Melissa Pico  
Myra Deluna  
Santa Ysabel Resort & Casino



# KONAMI

## KONAMI GAMING PURCHASE EQUIPMENT ORDER #LE11-0117-EP

Konami Gaming, Inc. ("Konami") agrees to provide Santa Ysabel Resort & Casino ("Customer") located at 25575 Highway 79, Santa Ysabel, CA 92070 with gaming machines and/or associated software, accessories, parts, etc. (collectively, "Equipment") as specified in this Order, subject to the terms herein and the attached standard terms and conditions.

### Gaming Machines

Quantity	Description	Unit Purchase Price	Extended Purchase Price
8	K2V Upright Podium Video, Dual 22" LCD, Step Topper	\$15,895.00	\$127,860.00
	*All games will have JCM BV, Selfor-test-Bar-Pointers, JCM/UBA		\$0.00
	No Coin Hardware, Black Powder Coat with Chrome Trim,		\$0.00
	Sentinel II P/T and brackets EPIC 950 ITHACA PRINTERS		\$0.00
			\$0.00
8	Promotional Discount (Games Must Be Delivered by December 30, 2011)	(\$2,000.00)	(\$16,000.00)
Subtotal Equipment:			\$111,860.00
Discount:		5.8%	(\$6,496.80)
SUBTOTAL EQUIPMENT			\$105,363.20

### Software

Quantity	Description	Unit Purchase Price	Extended Purchase Price
8	K2V Podium Theme- TBD	\$2,980.00	\$23,840.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
Subtotal Software:			\$23,840.00
SUBTOTAL SOFTWARE			\$23,840.00

### Accessories

Quantity	Description	Unit Purchase Price	Extended Purchase Price
8	K2T Third Party TITO Licenses	\$1,000.00	\$8,000.00
			\$0.00
			\$0.00
			\$0.00
			\$0.00
Subtotal Accessories:			\$8,000.00
Applicable Discount:		0.0%	\$0.00
SUBTOTAL ACCESSORIES			\$8,000.00

Other Charges (shipping, installation, training, etc.)

\$1,595.00

TOTAL SALES ORDER

\$139,917.00

Pricing set forth in the matrix above applies only to Purchase or Conversion-to-Purchase arrangements.

The Equipment is being ordered by Customer and provided by Konami under a ☒ Purchase ☐ Participation ☐ Daily-Fee ☐ Trial arrangement and is subject to the terms and conditions of (a) this Order form, (b) the attached standard terms and conditions and (c) the following special/additional terms and conditions, if any (which shall take priority over any standard terms and conditions which are inconsistent):

\*Terms and Pricing Applicable if Agreement is signed prior to November 18, 2011 and Games are delivered prior to December 30, 2011\*

**Equal Payment Terms:** Customer shall make 18 equal, consecutive monthly payments, with the first payment to additionally include all applicable TITO fees & shipping costs.

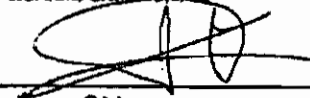
**Game Performance Warranty:** Customer has 180 days following installation to convert to a like-type game theme at no charge if the game theme initially installed fails to perform at house/section average for that denomination, excluding specialty games such as WAP's, participation, and licensed property games. Customer must return the original game theme kit to Konami to exercise this warranty.

Signatures below will constitute acceptance of this Order and the attached standard terms and conditions.

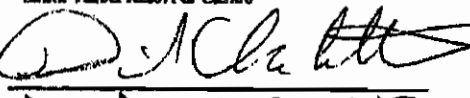
KONAMI GAMING, INC.

Santa Ysabel Resort & Casino

By:

  
RYOCHI KIMURA

By:

  
DAVID CHELETTE  
(Print name as signed above)

Title:

VP/CAO  
11/15/11

Title:

GM  
11-11-11

Date:

Date:

Please send completed form to Konami Sales Operations - Email: [SalesOperations@konamigaming.com](mailto:SalesOperations@konamigaming.com), or Fax: 702-616-0930

Konami Standard Sales & Security Agreement-2010

\*\*NOTE: Alterations, Additions and/or Deletions to this Agreement shall not be binding unless initialed by all parties\*\*



# KONAMI

INSTALLED HEREUNDER, WHETHER IN CONTRACT, IN TORT, UNDER WARRANTY, IN NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED THE FAIR MARKET VALUE OF THE NOTE ACCEPTOR, AND UNDER NO CIRCUMSTANCES SHALL KONAMI OR THE MANUFACTURER OF THE NOTE ACCEPTOR BE LIABLE FOR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. NEITHER KONAMI NOR THE MANUFACTURER OF THE NOTE ACCEPTOR SHALL BE LIABLE IN ANY RESPECT FOR THE ACCEPTANCE OF COUNTERFEITS AND/OR FRAUDULENT MATERIALS. ANY UNAUTHORIZED MODIFICATION, ALTERATION, OR REVISION OF ALL OR ANY PORTION OF THE EQUIPMENT, SHALL CAUSE ANY WARRANTY NOT DEEMED TO HAVE BEEN DISCLAIMED ABOVE TO BE NULL AND VOID. KONAMI, ITS AFFILIATES, SUBSIDIARIES, REPRESENTATIVES, AND AGENTS MAKE NO OTHER WARRANTY, EXPRESS OR IMPLIED.

11. **ENTIRETY OF AGREEMENT AND SEVERABILITY.** THIS AGREEMENT, INCLUDING ANY ADDENDUMS, SUPPLEMENTS, AMENDMENTS, OR MODIFICATIONS, SHALL BE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. IF ANY PROVISION OF THIS AGREEMENT IS HELD BY A COURT OF COMPETENT JURISDICTION TO BE UNLAWFUL OR UNENFORCEABLE, SUCH PROVISION SHALL BE SEVERABLE FROM THE REMAINDER OF THIS AGREEMENT, AND THE REMAINDER SHALL REMAIN IN FULL FORCE AND EFFECT. THE PARTIES AGREE THAT THE PARTIES' INTENT WAS TO ENTER INTO A LONG-TERM RELATIONSHIP, AND THAT THE PARTIES' INTENT WAS TO ENTER INTO A LONG-TERM RELATIONSHIP, AND THAT THE PARTIES' INTENT WAS TO ENTER INTO A LONG-TERM RELATIONSHIP.
12. **Maximum Aggregate Liability.** Independent of, severable from, and to be enforced independently of any other enforceable or unenforceable provision of this agreement, in no event shall Konami's aggregate liability to customer (including liability to any person or persons whose claim or claims are based on or derived from a right or rights claimed or claimable by customer), with respect to any and all claims of any and all claims arising from or related to the subject matter of this agreement, in contract, tort, or otherwise, exceed the total amount paid under this Agreement by Customer to Konami within the most recent 6-month period, plus interest computed as of the date of any final judgment against Konami.
13. **Privileged Licenses.** Customer and Konami each acknowledge that the other party hereto, and its parent company, subsidiaries and affiliates, are businesses that are or may be subject to and rule because of privileged licenses issued by governmental or tribal authorities. If requested to do so by the other party (the "requesting party"), each party (the "requested party") shall obtain any license, qualification, clearance or the like which shall be requested or required of it by the requesting party or any regulatory authority having jurisdiction over this Agreement or the requesting party or the requested party, or their respective parent company, subsidiaries or affiliates. If the requested party fails to satisfy such request or if the requesting party, its parent company, subsidiaries or affiliates, is directed to cease business with the requested party by any such authority, or if the requesting party shall in good faith determine, in the requesting party's sole and exclusive judgment, that the requested party, or any of its officers, directors, employees, agents, disbursees or representatives, (a) is or might be engaged in, or is about to be engaged in, any activity or activities, or (b) was or is involved in any relationship, either of which could or does jeopardize the requesting party's business or such license, or those of the requesting party's parent company, subsidiaries or affiliates, or if any such license is threatened to be, or is, denied, installed, suspended or revoked, this Agreement may be terminated by the requesting party without liability to either party. In addition, Customer and Konami each hereby acknowledge that it is illegal for a denied license applicant or a revoked license applicant to the laws, rules and regulations of the Nevada and other gaming authorities, or a business organization under the control of a denied license applicant or a revoked license, to enter into, or attempt to enter into, a contract with the other party without the prior approval of the appropriate gaming authorities. Customer and Konami each hereby affirm, represents and warrants to the other party that it is not a denied license applicant, a revoked license or a business organization under the control of a denied license applicant or a revoked license, and Customer and Konami each hereby agree that this Agreement is subject to immediate termination by the other party (without any liability to either party) if it should become a denied license applicant, a revoked license or a business organization under the control of a denied license applicant or a revoked license.
14. **Representation, Warranties and Covenants of Konami and Customer.** Customer and Konami represent, warrant, and covenant that:
  - a) Customer and Konami are duly organized, validly existing and in good standing under the laws of the jurisdiction governing its formation.
  - b) Customer and Konami have the essential authority and license(s) to purchase, operate, or sell as applicable, the Equipment outlined in this Agreement in accordance with applicable laws.
  - c) Customer warrants that the Equipment will only be used for lawful purposes in lawful locations.
  - d) The making, execution and performance by Customer and Konami of this Agreement have been duly authorized by and are not in conflict with Customer's or Konami's governing documents. The representatives of Customer and Konami executing this Agreement have been properly authorized to execute such documents, and Customer and Konami have been legally and appropriately identified by their lawful name in this Agreement.
15. **General Terms and Conditions:**
  - a) This Agreement constitutes the entire understanding between the parties with regard to the subject matter of this Agreement. There are no other understandings, expressed or implied, written or oral.
  - b) This Agreement may not be modified, and no provision herein shall be waived, except by a written instrument signed by both parties.
  - c) No waiver of any term or condition shall be deemed to waive that term or condition on a future occasion or any other term or condition, unless explicitly stated with a written instrument representing the waiver.
  - d) The illegality or unenforceability of any provision of this Agreement shall not affect the validity and enforceability of any legal and enforceable provisions thereof.
  - e) The laws of the state of Nevada shall govern the validity, performance and enforceability of the terms and conditions of this Agreement and other obligations created thereby.
  - f) This Agreement is subject to, and contingent upon the approval by Konami of, Customer's Bankruptcy/credit plan (as requested by Konami).
  - g) In the case of any controversy or claim arising out of or relating to this Agreement, or with respect to a breach thereof, the Parties first shall seek to resolve such matter amicably through discussion between the Parties, then, if necessary, by means of mediation. If the Parties fail to resolve such matter by such amicable discussions or mediation, all disputes will be resolved in through binding arbitration conducted in Nevada by a three-member panel in accordance with the American Arbitration Association rules, with the arbitration award being enforceable in all necessary federal and state courts and venues. The prevailing party in any dispute arbitrated under this Agreement shall be entitled to reasonable attorney's fees and costs incurred in the enforcement of this Agreement.
  - h) Neither party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises by any reason beyond its control, including any act of God, the elements, earthquakes, floods, fires, actions or decrees of governmental bodies, failure or delays in transportation or communications, or any act or failure to act by the other party, provided, however, that lack of funds shall not be deemed to be a reason beyond a party's control.
16. **Ticket-in/Ticket-out Functionality.** Customer acknowledges the below:
 

"Whereas KONAMI is a preferred Licensee under the IGT Casino Licensing Agreement Customer shall retain the Machine below in acknowledgment (as required in IGT's agreement with IGT) of having received:

Each gaming machine issued hereunder with enable capability (a "Licensed Casino Gaming Machine") is provided under a limited license to one or more of the following U.S. Patent Nos. 5,280,833; 5,283,874; 5,439,341; 5,470,079; 6,048,265; 6,729,552; 6,739,954; 6,736,723 and 7,175,991, as well as any continuations, continuations-in-part, divisions, reissues, reexaminations, and foreign counterparts thereof. Any use of a Licensed Casino Gaming Machine constitutes the acknowledgment of and agreement to the following "Limited License":

  - a. **Licensed Casino Gaming Machine License Rights.** Licensed Casino Gaming Machines are licensed for use solely (i) in connection with a casino gaming system that is separately licensed under these patents (a "Licensed Casino Gaming System") or (ii) on a standalone basis (not connected to a casino gaming system). The use of a Licensed Casino Gaming Machine with an unlicensed gaming system that has enable capability is an unlicensed use.
  - b. **Other License Limitations.** Each Limited License is expressly limited to the original Licensed Casino Gaming Machine (i.e., one serial number per license) and personal to the original customer location. A license may not be transferred from one gaming machine to another or from one customer (e.g., casino) to another. Any unauthorized transfer voids this license.
  - c. **Permitted Transfers to Affiliated Properties for purchased gaming machines.** For those games purchased by Customer, upon payment of a transfer fee (which fee is \$0 per gaming machine per transfer - and is subject to change by written notification), a customer may obtain authorization to transfer a Licensed Casino Gaming Machine between Affiliated Properties by obtaining a transfer authorization certificate from IGT. For purposes of this Limited License, Affiliated Properties are properties with a common owner who has a majority interest in both properties. Customer shall not move any games under this Agreement between locations without prior notice to and approval from KONAMI."

Customer also acknowledges that if it orders K01 Machines without Ticket-in/Ticket-out functionality and/or with such functionality disabled, then it shall not attempt to retrofit or otherwise enable such functionality without both (a) notice to and written approval by K01 and (b) payment of the required license fee.

Konami Standard Sales & Security Agreement-2010

\*\*NOTE: Alterations, Additions and/or Deletions to this Agreement shall not be binding unless initialed by all parties\*\*

**KONAMI**

Customer also acknowledges that the Ticket-in/Ticket-out functionality license on purchased game is specific to Customer, and that said license cannot be transferred or sublicensed by Customer without the payment of the current license fee (\$1000/franchise).

[illegible]

Konami Standard Sales & Security Agreement-2010

**\*\*NOTE: Alterations, Additions and/or Deletions to this Agreement shall not be binding unless initialed by all parties\*\***



July 16, 2010



Nichole Vargas  
SANTA YSABEL CASINO  
25575 Highway 79  
Santa Ysabel, CA 92070  
760/936-6461  
nvargas@thesyc.com

**CONTRACT**

JAMES EVENT PRODUCTIONS, INC., 1116 N. Olive Street, Anaheim, CA 92801-2541 (hereinafter referred to as "Producer") and, **SANTA YSABEL CASINO** (hereinafter referred to as "Client") hereby enter into this contract for Producer to produce an event for Client for **Saturday, July 17, 2010 & Sunday, July 18, 2010** (hereinafter referred to as "the Event").

For good and valuable consideration, the receipt of which is hereby acknowledged, including the mutual promises set forth below, the parties hereto agree as follows:

**DATE:** Saturday, July 17, 2010 & Sunday, July 18, 2010  
**TIME:** Saturday - 12:00pm - 11:00pm  
Sunday - 11:00am - 10:00pm  
**SET-UP TIME:** Saturday July 17, 2010  
Approx 7:00am - 8:00am  
**TEAR DOWN:** Monday, July 19, 2010  
**LOCATION:** 25575 Highway 79  
Santa Ysabel, Ca 92070  
**CLIENT:** Santa Ysabel Casino  
**CONTACT:** Nichole Vargas 760/936-6461  
**JOB#:** /CJ

**\*PLEASE SIGN THE LAST PAGE OF THIS CONTRACT AND MAIL OR FAX BACK THE ENTIRE DOCUMENT TO JAMES EVENT PRODUCTIONS TO CONFIRM YOUR EVENT. FAX NUMBER: (714) 563-9164.**



**DATE:** Saturday, July 17, 2010 & Sunday, July 18, 2010  
**CLIENT:** Santa Ysabel Casino  
**CONTACT:** Nichole Vargas 760/936-6461  
**SET-UP TIME:** Saturday July 17, 2010  
Approx 7:00am – 8:00am  
**TEAR DOWN:** Monday, July 19, 2010  
**TIME:** Saturday – 12:00pm – 11:00pm  
Sunday - 11:00am – 10:00pm  
**LOCATION:** 25575 Highway 79  
Santa Ysabel, Ca 92070  
**JOB#:** /CJ

**James Event Productions will provide the following:**

**RIDES & ATTRACTIONS**

\*Paratrooper  
\*Deluxe Swing Chair  
4 Carnival Booth Games  
2 games per booth

**CLIENT TO SUPPLY**

3 Rooms for James Productions Staff  
Prizes and Staff for Booth Games

\*Set-up, and Tear down with Staff included.

1. James Event Productions will create this fun-filled event, for the price of **\$13,450.00**.

**2. Cancellation**

An Event may be cancelled by Client by notifying Producer in writing, provided that in the event of such cancellation, the following amounts shall be due from Client to Producer and shall be deducted from the deposit on hand or if insufficient, additional funds shall be paid by Client to Producer:

- A. If a written cancellation is received more than Ninety days (90) prior to the date of the Event, the cancellation fee shall be Twenty-five percent (25%) of the full contract price.
- B. If the written cancellation is received from Thirty (30) to Ninety (90) days prior to the date of the Event, then the cancellation fee shall be Fifty Percent (50%) of the contract price.
- C. If the written cancellation is received less than Thirty (30) days prior to the date of the Event, then the cancellation fee shall be Seventy-five Percent (75%) of the contract price.

If a written cancellation is received from Client to Producer and Producer sells the date to another Client, then the total contract price shall be reduced by the amount received for such resold date, but shall not be below zero. This reduction shall only apply if the date resold is identical to the date of the Event. Notwithstanding the above, Producer shall have no obligation to resell or attempt to resell the date and reserves the right to reject any potential clients for such date for any reason Producer deems to be in its own best interest. If, due to Producer's fault the Event is unable to be held, the full amount of the deposits will be refunded to Client and neither party will have any further obligations to each other under this agreement.

July 16, 2010

2

3. Inclement Weather or Acts of God

If the Client requests cancellation due to substantial inclement weather or acts of God, such as flooding, windstorm and earthquake, the Producer will make reasonable efforts to reschedule the Event. Written notification of such requests by Client must be received by the Producer at its office not less than one (1) day prior to the Event. If the parties mutually agree prior to the Event to cancel and reschedule the Event, any deposits received from Client will be applied to the contract price for the rescheduled Event. If Producer, after reasonable efforts, is not able to reschedule the Event within the same calendar year as the originally scheduled Event, the Producer will retain the deposits received from Client as its full fee and neither party shall have any further obligations to the other under this agreement. The final decision as to whether the cancellation of an Event should be held due to inclement weather or acts of God shall be at the sole discretion of the Producer which discretion, however, shall be reasonably applied.

4. Insurance

Producer will provide comprehensive general liability insurance and property damage in the total amount of One Million Dollars (\$1,000,000.00) provided however, that Producer will not be required to obtain any additional insurance for the Event. Notwithstanding the above, Producer shall not be liable for any damage to any property or injury to any persons attending the Event if such injury to property or property damage occurs in connection with such persons participation in any sports, games, including without limitation basketball, volleyball, softball, horseshoes, tug-o-war, piñata breaking, ping-pong, and other such events, whether or not such injury or damage occurs in connection with an Event supervised by Producer or which occurs during or after an Event or whether occurring on or off the premises where the Event is held or which is not covered by the insurance provided by Producers and whether such damage or injury is due to the type of extent of the damages or injuries which occurs or results from that inflicted by one person upon another or caused by the negligent acts of any person present. Any injuries, damages or losses must be reported by any person to Producer on the day of the Event and failure to report such injury, damage or loss in writing may result in a waiver of insurance coverage. In such event, Producer shall bear no responsibility for such injury or damage.

5. Alcoholic Beverages

*-Enclosed Beer Garden*

Clients and any persons attending the Event shall not bring any alcoholic beverages to the Event or remove alcoholic beverages from the Event. Client shall not serve or permit to be served or consumed any alcoholic beverages at or near the Event, provided however, that any persons attending the Event who are legally able to allowed to consume alcoholic beverages may do so, but only those provided by Producer and only on the premises where the Event is held in the area provided by Producer. Client shall ensure that during the Event no minors or any people are intoxicated or in a condition in which they should not be consuming alcohol and shall cooperate with Producer in ensuring that such people do not consume any alcohol on or near the premises where the Event is held.

6. Prohibited Items

To ensure further safety at the Event, the following items shall not be brought to or near the premises during the Event:

1. Pets
2. Roller skates
3. Skateboards
4. Alcoholic beverages
5. Controlled substances
6. Firearms
7. Knives or similar items
8. Fireworks
9. Or any other items deemed by Producer to be dangerous if brought to or near the Event.

7. Indemnity

Client shall indemnify and hold harmless, Producer, its employees, executives and agents from and against any and all damages, liabilities, claims, costs, expenses, attorneys fees, etc. incurred by Producer directly or indirectly, in connection with the Event.

8. Modification

This agreement supersedes any and all prior agreements, whether oral or written, between the parties with respect to the Event and any changes hereto must be in writing and signed by both parties.

9. Terms of Payment

The balance of the contract price must be paid on the day of the Event. Any balance due from Client in connection with any additional persons attending the Event or any other additional costs must be paid within five (5) days from the receipt of a statement from Producer.

10. Miscellaneous Provisions

- A. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- B. Client agrees to execute any and all documents that Producer deems necessary in order to implement this agreement.
- C. Any and all notices required to be sent under this Agreement shall be deemed to have been received by the parties hereto and be effective on the business day when delivered personally or in mail by first class, certified or registered mail, return receipt requested, four (4) business days after such mailing to the other party at the address set forth above or such other address as designated in writing by either party.
- D. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided however, that Client may not assign this Agreement without Producers prior written consent.
- E. In the event of any controversy, claim or dispute between the parties with respect to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable expenses, including but not by way of limitation, attorney fees and costs.
- F. Each party to this Agreement represents and warrants that it has the authority to enter into this Agreement and that the party executing this Agreement is authorized to do so.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement which is effective on the date and year when executed by Producer.

A signed copy of this contract must be sent to James Event Productions prior to the Event date.

**JAMES EVENT PRODUCTIONS, INC.**

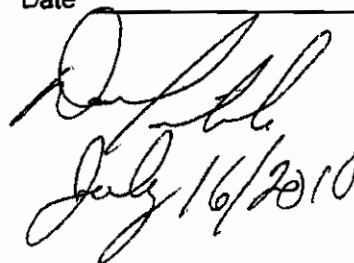
**SANTA YSABEL CASINO**

\_\_\_\_\_  
Candy James

\_\_\_\_\_  
Nichole Vargas

Date \_\_\_\_\_

Date \_\_\_\_\_

  
July 16/2010

\*  
Vendor will adhere to Tribal Internal control  
Standards applicable to the goods and services  
the vendor is providing.

July 16, 2010

5

06/24/2010 18:17 15308734488

INAG INC

PAGE 01/03

## INAG Inc.

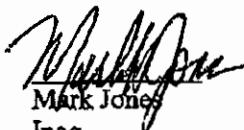
June 24, 2010

Mr. Don Trimble  
General Manager  
Santa Ysabel Casino  
25575 Highway 79  
Santa Ysabel, CA 92070

Dear Don:

Inag agrees to the following terms with regards to the Santa Ysabel Casino operating the table games of Boston 5 Stud Poker, Royal Baccarat Bonus, House Way Pai Gow Poker:

- ♦ The right to operate the games above free of charge until the end of the year December 31, 2010.
- ♦ Should the Santa Ysabel Casino continue to operate any of the above games beyond December 31, 2010, they agree to pay Inag an amount of \$500.00 per month per table.
- ♦ The Santa Ysabel Casino at any time may withdraw any of the above games from their establishment, once a game is removed that will in effect null and void the contract for that particular game.

  
Mark Jones  
Inag

6/24/10  
Date

  
Mr. Don Trimble  
Santa Ysabel Casino

6/25/10  
Date



06/24/2010 18:17 15308734488

INAG INC

2

PAGE 02/03

## Inag Inc.

June 24, 2010

Mr. Don Trimble  
General Manager  
Santa Ysabel Casino  
25575 Highway 79  
Santa Ysabel, CA 92070

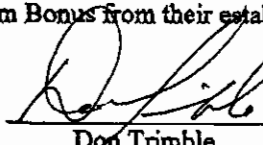
Dear Don:

Inag agrees to the following terms with regards to the Santa Ysabel Casino operating the Headstart Hold'em Blackjack Bonus game.

- ◆ The right to operate the game of "Headstart Hold'em Bonus"
- ◆ Inag grants the Santa Ysabel Casino the right to operate the game of Headstart Hold'em Bonus for a lease fee of \$300.00 per month per table.
- ◆ This contract will be null and void should the Santa Ysabel Casino at any time withdraw the last terminal of "Headstart Hold'em Bonus" from their establishment.

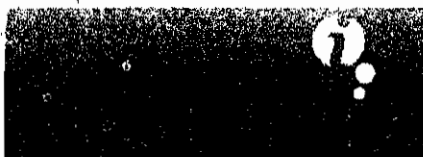
  
Mark Jones  
Inag

6.24.10  
Date

  
Don Trimble  
Santa Ysabel Casino

6/25/10  
Date

## FaceBook Promotion Contract



Contract #: 86991

Contract Date: May 7, 2012

**Client Name:** Santa Ysabel Casino  
**Attn:** David Chelette, Christopher Thomas  
**Mailing Address:** 25575 California 79 Santa Ysabel, CA 92070  
**Phone Number:**  
**E-mail Address:** [dchelette@thesyrc.com](mailto:dchelette@thesyrc.com) [cthomas@thesyrc.com](mailto:cthomas@thesyrc.com)  
**Type of Promotion:** Online Promotion Application  
**Promotion Start Date & Time:** Start Date: 06/01/2012 Start Time: 00:00:00 PST  
**Promotion End Date & Time:** End Date: 08/31/2012 End Time: 23:59:59 PST  
**Application URL:** <http://Santaysabelcasino.ImagineThis.com/giveaway>  
**Contract Fee:** Waived  
**Initial Promotion Fee:** \$5,000 (Includes 1,000 gifts and the (\$25,000) Scratch and Win, \$5 per item.

**Additional Costs:** If Client wants to continue the promotion by enabling more players to participate then the promotion will continue with the (\$25,000) Scratch and Win chances and a gift, at a charge of \$5 per player with a minimum 500 players add on. Client may set a maximum number of participants for this promotion, in writing and Imagine This agrees not to exceed the set maximum or charge Client if the maximum number is exceeded.

PLEASE READ THIS CONTRACT AND THE TERMS AND CONDITIONS  
([WWW.IMAGINE THIS.COM/TERMS-AND-CONDITIONS.HTML](http://WWW.IMAGINE THIS.COM/TERMS-AND-CONDITIONS.HTML)) CAREFULLY. THIS CONTRACT WILL  
BE **VOIDED** IF IT IS NOT PROPERLY **INITIALED AND SIGNED** AND ITS TERMS COMPLIED WITH.

1. This Contract is issued to the above named Client for the sole benefit of said Client by Imagine This for the exclusive purpose of application development and hosting for the Client's promotion and under the contract terms and conditions contained herein and at [www.ImagineThis.com/terms-and-conditions.html](http://www.ImagineThis.com/terms-and-conditions.html). Payment(s) pursuant to this contract is for the development and hosting of the application, as well as implementing and supplying gifts of the application for the Client's promotion.
2. **This signed Contract and payment must be received by Imagine This TEN (10) BUSINESS DAYS PRIOR to the start of the promotion.** Additional promotional contestants, in excess of the initial 1,000 will be invoiced on a net 30-day term basis.
3. This Contract, Exhibit A and the Terms and Conditions ([www.ImagineThis.com/terms-and-conditions.html](http://www.ImagineThis.com/terms-and-conditions.html)) of this agreement shall remain in effect in their entirety during the term of the Contract. *DC* (initial here).
4. This Contract, including exhibits and attachments, represent the entire final agreement between the Client and Imagine This and supersedes any prior agreements either oral or written. Any modifications hereto must be in writing and signed by both parties.
5. All copyright, trademark and other property rights currently owned by the Client or Imagine This shall remain the property of said owner with each party to the contract giving due respect and notice to such ownership, and each party to the contract retaining all legal rights and enforcement powers inherent in the ownership of said intellectual property.



6. Imagine This is not a party to, or involved in, the conduct or implementation of the Promotion. **Both parties to this agreement agree to protect, indemnify and hold each other harmless, from any and all claims made due to the conduct or implementation of the Promotion, which in any way is inconsistent with the terms and conditions of this Contract or is contrary to any state statutes or regulations. This indemnification provision includes all reasonable attorneys' fees as well as the amount of settlement or judgment that arises out of any claim** DE (initial here).
7. Client agrees to prepare and provide Imagine This with the official promotion rules and the Client's website privacy policy. Although Imagine This may provide the Client with a template for the official promotion rules and the privacy policy that comply with the law for most promotions in most locations, each of the 50 states, and most foreign countries have their own unique approach to regulating promotion. **Therefore it is the Client's responsibility to ensure that the official promotion rules and privacy policy comply with all laws that apply. Imagine This assumes no responsibility for its Client's compliance with the law.** DE (initial here).
8. Client agrees to limit any revisions to the application to two (2) rounds of revisions that must be submitted to Imagine This in writing within two (5) business days of the Client receiving the link to the application. Any changes made to the application at the request of the Client after the one (1) round of revisions may be subject to a change fee of \$125/hour based on the amount of time required by Imagine This to make those changes. DE (initial here).
9. **Choice of Law, Disputed Claims, Venue, and Attorney's Fees: Any and all disputes between the Client and Imagine This or its underwriters shall be governed by the laws of the State of California, without regard to its conflict of laws, and submitted to binding arbitration in accordance with the rules of the American Arbitration Association and pursuant to the provisions of the California Uniform Arbitration Act.**
10. DE (initial here). The prevailing party shall pay all expenses associated with arbitration. In the event Imagine This, Imagine This or its underwriters prevails at Arbitration, Client agrees to pay Imagine This and its underwriters' all reasonable attorney's fees. Client acknowledges responsibility to make user(s) aware of the requirement.
11. **Any changes to this agreement require written notification and approval of Imagine This.** All changes are required in writing or email (support@promogiant.com). Any contract fee adjustments will be billed to the Client at that time. If the promotion is cancelled due to a force majeure or for any other reason, which prevents the conducting of the promotion, assuming no users have entered the promotion, a full refund will be made less a cancellation fee of \$200.00. Imagine This must be notified immediately of any such promotion cancellation.
12. The Client has provided specific information such that the application can be setup and hosted by Imagine This and attests to the accuracy of the following information provided:
- Promotion Hosting Option:** Facebook Embedded Application
  - Product Selection:** Contingency & Instant Win
  - Promotion Length:** 90 Days
  - Prize Description:** \$25,000 Cash + 10 Dinner for Two and \$50 in Free Play Coupons + Free Gift T-Shirt (maximum T-shirt/gift will be on a per participant basis. Additional gifts will be provided if Client chooses to extend the promotion beyond the 1,000 initial participants. Additional participants may be added at a minimum order of 500.)
  - Registration Page:**
    - Initial User Splash Page - Ask Registrant for Players Club Number
  - Mandatory 'Liking' of FB Page**
  - Official Rules & Privacy Policy:**
    - Client will provide Imagine This with the Official Rules and Privacy Policy for the company (Microsoft Word, PDF or URL to the rules and/or policy on the company's website) - *Must be emailed to rules@promogiant.com at least 2 business days prior to the start date.*

**EXHIBIT "A" - CONTINGENCY APPLICATION AGREEMENT**

Contract #: 86990


**Number of Entrants per Promotion:** 1,000 unless additional participants are purchased  
**Maximum Prize Limit:** \$25,000.00 Cash  
**Maximum Aggregate Prize Limit:** \$25,000.00 Cash (Max. of 1 payout only)

Contingent upon full compliance with these Contract Terms and Conditions, Imagine This hereby agrees to reimburse the Client named on the Contract up to the specified maximum prize value if an eligible entrant successfully enters the said Promotion at exactly the right date, hour, minute and second. The rights and obligations of the parties to the Contract are exclusive to the contracting parties, may not be assigned, transferred, or delegated, and are not intended to create any third-party beneficiary rights for any contestant in the promotion.


1. For the purpose of this promotion, an initial amount of 1,000 contestant(s), are eligible for the \$25,000 Scratch and Win program. **Additional Scratch and Win chances with gifts can be purchased in increments of 500, for a chance to match their entry time into the promotion exactly to a predetermined entry time, which has been pre-programmed into the secure promotion application provided by Imagine This. The \$25,000.00 grand prize will be awarded to an entrant whose entry time into the promotion matches exactly the predetermined winning time down to the second which is on file at Imagine This (see item 5). There may be no more than 10,000 total entries into the promotion, which are eligible for this contest under any circumstance. There shall be a maximum of one (1) winner covered by this contract.**
2. Current or former employees of Client, its parents, subsidiaries, affiliates, advertising and promotion agencies and their family/household members (defined as parents, spouse, siblings and children) are not eligible to participate.
3. **No user may submit more than one entry during the promotion period and there will be a maximum of 10,000 entries acknowledged for this promotion.**
4. **The schedule of prize awards is as follows:** maximum aggregate liability: \$25,000.00 (maximum 1 winner(s)); this contract covers throughout the following contest date(s): 06/01/2012 – 08/31/2012.
5. **Under no circumstances will any party other than Imagine This have knowledge of the official winning entry time.**  
 (initial here). The preselected winning time will be placed in a sealed master envelope and provided to the client promotion supervisor at least one (1) day prior to the beginning of the promotion. The secure website application provided by Imagine This will be calibrated to the predetermined grand prize winning entry time contained in the sealed master envelope. Releasing the winning combination in any manner prior to the conclusion of this promotion will result in a claim denial. **Nothing may be done to enhance a user's normal chances of winning this promotion.**
6. **The following application must be used during the execution of the promotion:**
  - a) Client will be provided a secure website application address containing the preprogrammed entry time mechanism from Imagine This. This secure promotion website must be used for this promotion. No other website may be used under any circumstances. The winning entry time may not be altered or changed by the client at any time during the promotion. **The secure website application may not be tampered with or altered in any way.**  (initial here).
  - b) The secure website application address is as follows: <http://promo@promogiant.com/giveaway>
  - c) Any problems with the secure website application should be immediately reported to Imagine This at 877-491-4900.
7. **The following procedure will take place during the execution of the promotion:**
  - a) Users will enter the promotion at the provided website address location (see item 6 above) and after providing basic contact information will be directed to a scratch and win component of the application. The time in which they reach that page will be that user's entry time (this time is displayed on screen) that is matched to the preprogrammed winning entry time. The user will use the mouse to virtually scratch off the top layer of the scratch game to instantly reveal whether they are a winner of the grand prize.
  - b) In order for there to be a winning entry, a user must be entered into the promotion website at exactly the right time and receive the winning message under the scratch layer.
  - c) In the event of a grand prize claim, the Client will be required to notify Imagine This and provide Imagine This with the user's name and Players Club number. The entry time of the user must match exactly with the predetermined entry time provided by Imagine This for this promotion. If the winning entry time of the user does not match the predetermined winning entry time provided by Imagine This, no claim will be acknowledged for this promotion.
  - d) In the event that no users have matched the predetermined winning entry time at any time during the promotion dates, the predetermined winning entry time may be released by opening the provided sealed master envelope. Once the sealed master envelope is opened and the predetermined winning entry time has been released there will be no further opportunities for a claim for this promotion.
8. The Client is responsible for the users understanding of the terms and conditions of this promotion. In the event of a winner both the Client and Imagine This will be informed via email. The winner will print out the winning coupon which will include the Players Club Number. The winner will go to the Players Club to redeem their prize.
9. **It is imperative that the sealed master envelope containing the winning entry time be kept in a secured location until directions are given by an Imagine This representative. In the event that an entry that correctly matches the winning entry time results in the website displaying the winning message, the envelope must be returned to Imagine This and must be received in its original sealed, unopened condition. The envelope will be examined thoroughly by Imagine This upon receipt.**



The envelope seal may not be broken in any manner, nor may there be any tears, creases, or other marks visible on the envelope. Any signs of tampering on the sealed master envelope will result in an immediate claim denial.

 (initial here).

10. Once the sealed master envelope has been opened, irrespective of the reason, no claims shall be acknowledged for this promotion.

 (initial here).

11. Any winning contestant will be required to produce sufficient identification. The Players Club number must match winner; ID must match Players Club number. No family member, friend or any other person will be allowed to accept prize for winning contestant.
12. **Failure to adhere to any of the terms and conditions outlined herein will result in a claim denial.** A winner is liable for any tax consequences resulting from their acceptance of any prize associated with this promotion.
13. Claims notification: Immediate telephone and written notification by Client to Imagine This or Imagine This at (877) 491-4900 or 858-531-5271 and support@promogiant.com must be reported no later than the close of business on the first business day after the promotion.
14. Proof of Claim: The following documentation will be furnished to Imagine This as proof of a prize claim (Imagine This will furnish forms): Affidavits of the Promotion Official and Affidavit of the Winner.
15. Investigation: Upon receipt of Proof of Claim, Imagine This may conduct a reasonable investigation, as a condition to payment of the claim if, in the sole opinion of Imagine This, such an examination is warranted by the facts.

I HAVE READ THIS CONTRACT, EXHIBIT "A" AND THE TERMS & CONDITIONS  
(WWW.IMAGINE THIS.COM/TERMS-AND-CONDITIONS.HTML) AND AGREE TO ABIDE BY EACH REQUIREMENT

SANTA YSABEL  
CASINO :

IMAGINE THIS:



DATE: 5-14-12

DATE: \_\_\_\_\_



# GCA Casino Marketing Services

## QuikMarketing



DATE 1/13/2012 PROJECT # QM 20112974  
 SERVICE CENTER Santa Ysabel Casino  
 PROPERTY CONTACT Chris Thomas  
 TITLE Marketing Manager  
 ADDRESS 25575 Highway 79  
 CITY ST ZIP Santa Ysabel, CA 92070  
 PHONE (760) 787-0909

**Project Description:**

Number of name/addresses used

22,463

**ESTIMATE**

(final invoice will be  
 based on net  
 number of names  
 after list is scrubbed)

Date Range	past 12 months
Residence	50 mile radius of property
Destination	N/A
\$ Range	all
Single Tx	N/A
Cumulative \$	N/A
Daily Avg Tx	yes
Average Tx	N/A
Comments	2 or more Transactions in past 12 months

Tier	Count	Cost per	Total
\$20	99.00		\$ -
\$100	199.00	3184 \$ 0.17	\$ 549.24
\$200	299.00	5534 \$ 0.23	\$ 1,272.82
\$300	399.00	4838 \$ 0.40	\$ 1,947.30
\$400	499.00	3002 \$ 0.63	\$ 1,898.77
\$500	599.00	2005 \$ 0.86	\$ 1,729.31
\$600	699.00	1425 \$ 1.04	\$ 1,474.88
\$700	799.00	894 \$ 1.27	\$ 1,130.91
\$800	899.00	668 \$ 1.44	\$ 960.25
\$900	999.00	537 \$ 1.73	\$ 926.33
\$1,000	1,499.00	376 \$ 2.01	\$ 756.70
\$1,500	1,999.00		\$ -
\$2,000	2,499.00		\$ -
\$2,500	2,999.00		\$ -
\$3,000	3,499.00		\$ -
\$3,500	3,999.00		\$ -
\$4,000	4,999.00		\$ -
\$5,000	5,999.00		\$ -
\$6,000	6,999.00		\$ -
\$7,000	7,999.00		\$ -
\$8,000	\$8,999		\$ -
\$9,000	\$9,999		\$ -
\$10,000	\$14,999		\$ -
\$15,000	\$19,999		\$ -
\$20,000	above		\$ -
<b>Total</b>	<b>22,463</b>	<b>\$0.56</b>	<b>\$ 12,646.49</b>

The return address on all pieces will be PO Box 94918 LV, NV 89193-4918

Santa Ysabel Casino

agrees to share response information from this campaign with Global Cash Access.

cm5

Page Two

DATE 1/13/2012  
 PROJECT #QM 20112974  
 CONTACT Chris Thomas  
 PROPERTY Santa Ysabel Casino

**Quick Marketing Fees:**

Mailing List (per name) \$0.56

NOTE: All names remain the property of GCA

The price per name is for multiple uses of the list. Santa Ysabel can use this list two times for the listed price above.

Data/Mail Administration (includes: data run, any reruns for query changes, compiling data in lettershop usable format, setting up tiers for lettershop to correspond specific mailpieces to certain individuals based on predetermined criteria, sending out database, handling return mail (per name)

\$ 0.04

Set-up Fee includes set up of account, initial query, set up with mailhouse

\$500.00

**QuikMarketing Fees:**

Mail List	\$ 12,645.50
Mail Administration (approx)	\$ 400.52
Set up Fee	\$500.00
<b>Total</b>	<b>\$ 13,546.02</b>

\$ 7,022.51 deposit is due and payable prior to the commencement of the project.

Please mail deposit to: Wendy Colosi, Global Cash Access, 3525 E. Post Rd. Suite 120, Las Vegas, NV 89120

**Note: Return address on all mail pieces must be: PO Box 94918, Las Vegas NV 89193-4918**

THIS AGREEMENT (the "Agreement") is made as of 1/13/2012 by and between Global Cash Access, and Santa Ysabel Casino ("Service Center") with respect to the following:

WHEREAS, GCA is engaged in the business of facilitating cash access patron data for a direct mail campaign, e-mail campaign or call campaign on behalf of Service Center. Service Center will not have access to data prior to, or after the campaign has run. Service Center will only know patron data if said patron responds to Service Center's offer.

WHEREAS, GCA and Service Center are desirous of entering into an agreement, under the terms of which GCA shall become the supplier of patron data for a prospecting campaign;

cmB

NOW, THEREFORE, for the mutual consideration set forth herein, GCA and Service Center agree as follows: GCA shall receive from Service Center a set of criteria that GCA shall use to run the patron query. The Service Center criteria are listed above in the 'Project Description'. Also listed in the Project Description is the count of name/addresses to mail an offer on behalf of the Service Center.

Services. GCA shall provide to Service Center the following Services: running the query based on Service Center criteria, preparing the mailing list, coordination and follow-up with printer/mailling and Service Center. GCA will be responsible for the data input for return mail in conjunction with this Project.

Warranties: Indemnity. EXCEPT AS EXPRESSLY SET FORTH IN THE PARAGRAPH CAPTIONED "PROJECT DETAILS", GCA HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. GCA shall not be liable for any special, indirect, incidental, consequential or punitive damages of any kind (including without limitation, lost profits or any damages resulting from loss of use of services or interruption of services) even if GCA has been advised of the possibility of same. GCA shall not be responsible for respondents' gaming activity and does not guarantee the outcome in terms of number of respondents. GCA shall not be responsible for the lettershop (mailhouse) responsibilities. GCA shall not be responsible for the USPS delivery of Standard Class mail since the USPS has no guarantee for the length of time to deliver Standard Class mail. **GCA SHALL NOT BE RESPONSIBLE FOR COMPLIANCE WITH ANY FEDERAL, STATE OR LOCAL GAMING AGENCY WITH REGARDS TO MAILING TO A GCA PATRON THAT IS ON AN EXCLUSION LIST (other than GCA's STEP list).** GCA shall indemnify and save harmless Service Center from and against any claims, suits, demands or causes of action brought against Service Center which are the result of any negligent, wanton or willful conduct of GCA or its employees in the performance of GCA's obligations as set forth in this Agreement. Service Center shall indemnify and save harmless GCA from and against any claims, suits, demands or causes of action brought against GCA which are the result of any negligent, wanton or willful conduct of Service Center or its employees in the performance of GCA's obligations as set forth in this Agreement. The provisions of this paragraph shall survive any termination or expiration of this Agreement.

Payment Terms. Payment in full is due prior to mailing unless specified in this agreement; any adjustments such as shortages or refunds are due within thirty (30) days after invoice is received. Service Center agrees that if Service Center does not pay GCA's account within 60 days after it is due and payable, GCA is irrevocably authorized to deduct the balance due to GCA under this Agreement from any other funds payable by Service Center to GCA or any of its subsidiaries or affiliates under the terms of any other agreement, including, without limitation any commissions paid by GCA to Service Center.

Compliance with Laws: Indemnity. Service Center represents, warrants and covenants that it will comply with all applicable laws, including without limitation, state and federal laws. Service Center hereby represents and warrants to GCA that Service Center has all right, power and authority to grant to GCA the rights granted herein and to perform all of Service Center's obligations hereunder, and that Service Center owns or controls each legal entity subject to this agreement. Service Center shall indemnify and hold harmless GCA from and against any losses, liabilities, damages, fines, judgments (including interest, penalties and attorneys' fees), costs, expenses, claims, suits, demands or causes of action brought against GCA which are based upon, arising out of or otherwise in respect of any breach of the representations, warranties and covenants contained in this paragraph. The provisions of this paragraph shall survive any termination or expiration of this Agreement.

Limitation of Liability. GCA's aggregate liability under this Agreement shall not exceed the aggregate of Fees paid by Service Center under this Agreement. GCA shall not be responsible for any failure to fulfill its obligations hereunder due to causes beyond its reasonable control, including without limitation acts or omissions of government or military authority, acts of God, disruption of telecommunication facilities, shortages of materials, transportation delays, USPS delivery, fires, floods, labor disturbances, riots or wars. The provisions of this paragraph shall survive any termination or expiration of this Agreement. GCA shall not be responsible for Service Center accepting redemption of offers that have been posted on the internet, photo copied or given to an individual that was not the intended recipient.

Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns. In the event Service Center does not provide GCA with written notice of the assignment of this Agreement, and receive consent from GCA thereto, Service Center shall remain wholly liable hereunder.

Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, written or oral. This Agreement may only be modified in writing and signed by both parties.

#### AGREED AND ACCEPTED:

GCA

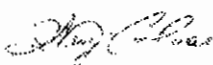
Signature:

Name (print):

Title:

Date:

Phone:

  
Wendy Colosi  
Sr. VP Mkt Services  
1/13/2012  
702-855-3005

#### AGREED AND ACCEPTED:

Santa Ysabel Casino

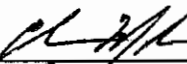
Signature:

Name (print):

Title:

Date:

Phone:

  
Charles M. Brunner  
Controller  
1/13/12  
760-787-2236

## SALES AGREEMENT

This agreement dated: April 26, 2011 is by and between Santa Ysabel Casino ("Buyer"), with a place of business located at 25575 HWY 79 - P.O. Box 600 Santa Ysabel, Ca 92070 and **Game Stands, LLC** ("Seller") with a place of business located at 1561 Pioneer Way, El Cajon, CA 92020 Subject to the terms and conditions of sale contained herein, Seller agrees to sell to the Buyer, and the Buyer agrees to purchase from the Seller, the items listed below:

8 ea Used Aristocrat MAV 500 Mark VI Slots with new LCD's

Used Games to be parts complete & working at time of shipping  
Game Cabinets to be Black Laminate or Black Powder Coat  
Games to include NEW Ceronix LCD's  
Games to include PT Brackets for CDS/Aristocrat Sentinel II  
Games to include GLI Approved California Software  
Games to include UBA Bill Acceptors  
Games to include ~~Seiko~~ **TRANSACTION** 950 Printers  
Games to include 2 cash boxes / stackers per game  
EXCLUDES: All door locks - Installation and set up - Slot Bases  
Games are FOB - Santa Ysabel, CA 92070

### **PAYMENT TERMS:**

Daily Fee of \$ 15.00 per day per game for a period of 224 days. On day 225 a balance due of \$ 1.00 per game is due and payable. Daily Fee payments are due and payable 2X per month for a period of 7.47 months (224) days. Total amount paid \$26,888.00

Offer is valid for 14 days from above date first written.

Agreed to by the parties:

SELLER:

Game Stands, LLC

BUYER:

Santa Ysabel Casino

BY:

Ron McKown  
Ron McKown

BY:

Paul Chute

TITLE: Managing Member

TITLE:

GENERAL MANAGER

DATE: April 26, 2011

DATE:

6-9-11



## MASTER LICENSE AGREEMENT

702 936-1751

This Master License Agreement ("Agreement") which includes the attached Standard Terms and Conditions is made as of the 14<sup>th</sup> day of January, 2010 by and between **Galaxy Gaming, Inc.** ("Galaxy") and **Santa Ysabel Casino**. ("Client"). Upon the Client agreeing to license any game from Galaxy and Galaxy sending an **Order Confirmation** in a form similar to that attached hereto as **Exhibit A** the format of which may be modified from time to time, Client and Galaxy agree to be bound by this Master License Agreement the terms of which shall be incorporated by reference into each Order Confirmation.

**1. TERM AND TERMINATION.**

Master License Agreement: This Agreement shall commence on the first day of operation of the game(s) and continue until either party terminates by providing the other party thirty-day prior written notice. Notwithstanding any termination, this Agreement shall remain binding on Client for so long as games are being operated by Client or contracted by Client to be operated.

Individual Games Under Order Confirmations: With respect to games under individual Order Confirmations, either party may terminate the license for just those games by giving written notice to the other party. If notice of termination is delivered on or before the 10th of the month, the termination or reduction is effective at the end of the current calendar month; otherwise termination is effective at the end of the ensuing calendar month.

**2. ORDER CONFIRMATIONS.** The parties understand and agree that although this Agreement may apply to many individual transactions, further Order Confirmations shall also be required to consummate each transaction. No such transaction shall be binding on either Client or Galaxy until an Order Confirmation is issued. The terms of the Order Confirmations shall expressly incorporate the terms of this Agreement and shall be supplemental to the terms of this Agreement relative to that individual transaction with respect only to type and quantity of the game(s) licensed, the game(s) pricing, and delivery dates, but in no event shall any Order Confirmation be deemed to contradict any term or condition of this Agreement.

**3. CONFIDENTIALITY.** Galaxy shall hold confidential and not disclose Client's game performance information in any manner such that it could be connected to Client. However, Galaxy may aggregate the game performance information with that of other clients' information on a regional, jurisdictional, and/or national basis and use the aggregated information for any purpose including but not limited to research, marketing and customer relations so long as the aggregate information bears no connection to Client.

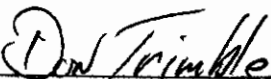
This Agreement is contingent on the authorized endorsement of Galaxy and on any necessary regulatory approvals with respect to the games and/or Galaxy.

"Client"

Name/Title:



Signature:

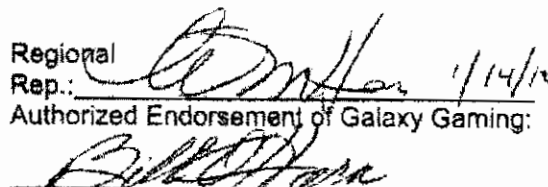


"Galaxy Gaming"

Regional

Rep.:

Authorized Endorsement of Galaxy Gaming:

 1/14/10

Rev. 3/27/08





***Santa Ysabel Casino***

**Proposal for Annual Maintenance Contract**

***Brett Wheeler  
Principal Architect  
Gaming Analytics, LLC  
1153 Bergen Parkway  
Suite M322  
Cell: 760.533.7939***

## 1. RECITALS

Whereas Brett Wheeler, Principal Architect with Gaming Analytics, LLC, has previously constructed and maintained custom software packages for Santa Ysabel Casino, and has the technical experience and system knowledge to continue to maintain these software packages, Gaming Analytics, LLC is offering an Annual Maintenance Contract to Santa Ysabel Casino in order to provide continuing support under the following terms.

## 2. SOFTWARE PACKAGES COVERED

The software systems covered by this Proposal are:

- Club Card Manager
- Key Inventory System
- Player Point Lookup Utility

## 3. SERVICES OFFERED

Services included under this contract are all maintenance and break fixes required to keep the software performing as originally intended. Additionally, feature enhancements are included up to an hourly limit of 20 hours per quarter year (this does not include maintenance and break fixes, which has no limit) ) All billable hours exceeding the 20 hour limit shall be preauthorized with a not to exceed amount designated for each project.

If feature enhancements are desired that require more than the quarterly limit, any authorized overage will be billed at the discounted rate below.

## 4. FEES

Annual Service Fee for this contract is \$3000 per annum, payable in four quarterly installments of \$750 each, with the first payment due on 7/15/2011. Invoices are due upon receipt, with a 1½ % late fee assessed if payment received after the 15<sup>th</sup> of the month.

Alternatively, all services are offered at the discounted hourly rate of \$115 per hour while under the effect of this contract. Any services performed outside the scope of this contract, or while this contract is not in effect, including if quarterly payment is more than 15 days overdue, will be billed at the full rate of \$150 per hour.

## 5. RENEWAL AND TERMINATION

This contract may be renewed annually by The Santa Ysabel Casino with (30) day prior to the expiration of the contract failing termination or material breach of the terms of this contract.

## 6. ACCEPTANCE

Contract accepted on behalf of Santa Ysabel Casino this 15 day of July, 2011,

DAVID CHELETTE GM

Printed Name and Title



Signature

## PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("Agreement") shall govern all sales of products indicated below by Farmer Bros. Co., with principal offices at 20333 South Normandie Avenue, Torrance, California 90502 ("Farmer Brothers") to the Buyer named below.

Effective Date: January 15, 2012

Buyer's Name: Santa Ysabel Casino

Buyer's Address: 25575 Hwy 79, Santa Ysabel, CA 92070

In consideration of the mutual covenants contained herein and other consideration, the receipt and sufficiency of which is mutually acknowledged, the parties agree as follows:

1. During the Term of this Agreement (as defined in paragraph 2 below), Buyer agrees to purchase exclusively from Farmer Brothers all of Buyer's requirements for coffee and ice tea, (collectively, the "Products"). Buyer agrees not to purchase Products from any source other than directly from Farmer Brothers. This Agreement shall cover any locations or units owned, operated or managed by Buyer or any of its subsidiaries or affiliates, whether now existing or hereafter acquired or opened during the Term of this Agreement. Products shall be delivered to locations specified by Buyer only via Farmer Brothers' route delivery system or dropped shipped at a mutually agreed upon location by a Farmer Brothers route delivery vehicle. Buyer shall pay Farmer Brothers' invoices net 30 days from the date of Farmer Brothers' invoice. Other terms of sale, including invoicing, transfer of title and similar matters shall be as per Farmer Brothers' standard invoice or as otherwise agreed in writing by Farmer Brothers and Buyer.

2. The term of this Agreement shall commence on the Effective Date first above written and shall continue until January 14, 2014. This Agreement shall automatically renew in successive one (1) year increments unless either party provides thirty (30) days' written notice of intent not to renew before the expiration of the term. Furthermore, either party may terminate this Agreement with a 60 day written notice.

3. Pricing for the Products shall be as set forth on Exhibit A. Buyer agrees to maintain in strict confidence and not disclose any of the pricing, volume, and incentive provisions of this Agreement (which includes Exhibit A hereto).

4. Equipment Loan. In consideration of Buyer's agreement, including its commitment to purchase Products as set forth in this Agreement, Farmer Brothers agrees to loan to Buyer quantities of equipment ("Equipment") as Farmer Brothers deems reasonably necessary to dispense the Products at no additional cost. The terms of such loan of Equipment shall be as follows:

(a) Buyer agrees that Farmer Brothers shall not be responsible for any damages, claims, injury or liability (collectively, "Damages") relating to the operation of the Equipment while it is in the possession of Buyer (except for Damages caused by the negligence of Farmer Brothers, its employees, agents or contractors), that Buyer shall be responsible for damage caused by its negligent use of the Equipment, and that Buyer shall be responsible for the loss, theft or destruction of the Equipment;

(b) Title to and ownership of the Equipment shall at all times remain with Farmer Brothers. Buyer covenants that it shall not remove or obscure labeling on the Equipment indicating that it is the property of Farmer Brothers;

(c) Buyer shall use the Equipment only to dispense Farmer Brothers Products;

(d) Buyer covenants that it shall use the Equipment in accordance with the written instructions of the equipment manufacturer and Farmer Brothers, and shall not make material modifications to the Equipment (except as authorized by Farmer Brothers) without the written consent of Farmer Brothers;

(e) Buyer covenants that it shall permit Farmer Brothers reasonable access to Buyer's premises for the purpose of inspecting the condition and operation of the Equipment;

(f) Buyer covenants that it shall, upon termination of this Agreement for any reason, permit Farmer Brothers reasonable access to the Buyer facilities where the Equipment is located to permit Farmer Brothers to remove the Equipment;

(g) Buyer shall not sell, assign, transfer, pledge, hypothecate or otherwise dispose of, encumber or permit a lien to be placed on the Equipment, and Buyer shall not remove any Equipment from the location installed by Farmer Brothers without Farmer Brothers' prior written consent; and

(h) Buyer shall be responsible for all federal, state or local taxes levied upon the Equipment or upon its use, and shall reimburse Farmer Brothers for any such taxes upon receipt of Farmer Brothers' invoice for such taxes or pay such taxes directly. Buyer shall indemnify Farmer Brothers for any liability for such taxes.

*cmf #160*

5. Equipment Service. Farmer Brothers (or its designee) shall be responsible for the installation, repair and maintenance of all Equipment. The cost of such services are included in the price of the Products, except that Buyer shall be responsible for any costs of repair resulting from the negligence of Buyer or its misuse of the Equipment, and Farmer Brothers shall have the right to adjust Product prices in the event Farmer Brothers determines that such service costs are excessive. Any special wiring or plumbing required to install Equipment shall be arranged for and paid for by Buyer.

6. Use of Farmer Brothers Marks. Farmer Brothers owns certain proprietary and other property rights and interests in and to trademarks, service marks, logo types, insignias, trade dress designs and commercial symbols relating to Farmer Brothers and the Products (the "Farmer Brothers Marks"), which Buyer acknowledges are the sole and exclusive property of Farmer Brothers, with any goodwill arising from the use thereof to inure solely to the benefit of Farmer Brothers. During the Term of this Agreement, Farmer Brothers may provide Buyer with displays, signage and other advertising materials incorporating the Farmer Brothers Marks or approve Buyer's use of the Farmer Brothers Marks on Buyer's menus. Buyer shall use such materials solely in connection with the marketing and sale of Farmer Brothers Products and for no other purpose. If at any time Buyer shall cease dispensing the Products, whether in connection with the expiration or earlier termination of this Agreement or otherwise, all rights granted hereunder to Buyer to use the Farmer Brothers Marks shall forthwith terminate, and Buyer shall immediately and permanently cease to use, in any manner whatsoever, any Farmer Brothers Marks and all displays, signage, advertising materials, menus and other materials incorporating the Farmer Brothers Marks and, upon request, immediately return to Farmer Brothers all such materials owned by Farmer Brothers or destroy all such materials owned by Buyer incorporating such marks.

7. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and their permitted assigns. Neither this Agreement nor any part hereof shall be assignable by operation of law or otherwise by Buyer.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of California without reference to its conflict of laws rules. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought against either of the parties only in the courts of the State of California, or, if it has or can acquire jurisdiction, in the United States District Court for the Central District of California, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue or inconvenient forum laid therein. In the event any action or proceeding is brought by either party by reason of any default or breach of this Agreement by the other party, the non-defaulting party shall be entitled to recover from the defaulting party all of its costs and expenses of suit, including reasonable attorneys' fees and costs.

9. Miscellaneous. This Agreement, including any exhibits attached hereto, constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior or contemporaneous negotiations or agreements, whether oral or written, relating to the subject matter hereof. In the case of any conflict between the terms of this Agreement and any exhibit, invoice, purchase order or similar document, the terms of this Agreement shall govern. Except to the extent specifically provided herein, including any exhibits referred to herein, this Agreement shall not be modified nor shall any provision of this Agreement be waived except by a writing signed by an authorized officer of each party hereto. If any provision of this Agreement is held to be unenforceable, in whole or in part, such provision shall be ineffective to the extent of the prohibition or unenforceability without invalidating or having any other adverse effect upon any other provision of this Agreement. The waiver by any party of any instance of any other party's noncompliance with any obligation or responsibility herein shall not be deemed a waiver of other instances or of any party's remedies for such noncompliance. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.


IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates indicated below.

FARMER BROS. CO.

SANTA YSABEL CASINO

By: \_\_\_\_\_  
Name: Steve Heyman  
Title: Vice President of Sales

Date: \_\_\_\_\_

By:   
Name: Chuck Bauman  
Title: Controller

Date: 12/16/11

cm 8/160  
✓

## EXHIBIT A

Product Prices

A. The prices for the Products shall be as follows:

Product Number	Description	Unit Price
125007	COF LIQ COLMBIAN BLN .5GA	\$78.50
125009	COF LIQ DARK ROAST .5GA	\$86.50
125011	COF LIQ COL BLN DCF .5GAL	\$89.50
5860269	ICE TEA UNFLAVORED 32/3OZ	\$45.00
5878618	PREBICA ESPRESSO PODS 100 CT	\$31.95
5878626	PREBICA ESPRESSO PDS DEC 100CT	\$35.72

Farmer Brothers may, upon 30-days written notice to Buyer, adjust the above prices to reflect documented increases in ingredient, packaging, manufacturing, and delivery or service costs. Prices for products other than the above-listed Products that Farmer Brothers may sell to Buyer shall be Farmer Brothers' list price as in effect from time to time.

Farmer Brothers also reserves the right to request Product price adjustments in the event of an extraordinary event that causes unanticipated and significant increases in the costs of raw materials, ingredients, manufacturing or delivery costs.

B. Prices above and overall program is being made available in reliance upon Buyer purchasing all of the following Minimum Volumes of Products each Agreement year during the Initial Term:

Liquid Coffee	260 cases (520 cases total during the Initial Term)
Espresso Pods	52 cases (104 cases total during the Initial Term)
Tea Products	52 cases (104 cases total during the Initial Term)

C. In the event Buyer's actual or projected purchases are below the Minimum Volumes, Farmer Brothers may adjust overall program. Adjustments may include but are not limited to pricing, equipment investment, and service levels. Farmer Brothers may from time to time provide Buyer with a forecast showing actual purchased volumes and how they measure against the above Minimum Volumes.

cm 8/22/12  
✓

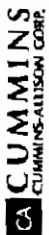


2007 11:29 1310

PAGE 07

## Preventative Maintenance Inspection Agreement

This is not an invoice. Terms: Service not rendered until receipt of Payment.



PO Box 339 • 981 Featherdale Dr. Mt. Prospect, IL 60056 • 847.269.5560

Machine Location:

County:

Santa Ysabel Resort & Casino  
25575 Highway 79

City: Santa Ysabel State: CA Zip: 92070

Contact: Doug Lentz  
Phone #: 520-971-1891

Application: ☐ Commercial ☐ Rural

☐ Rural

Bill To:

Santa Ysabel Resort & Casino  
P.O. Box 600

City: Santa Ysabel State: CA Zip: 92070

Attention: Accounts Payable NAICS: 610

Phone: ☐ Tax Exempt

PO # (Certificate Attached)

Billing Frequency:

A, S, T, Q, 2, 3 (Additional charges for other than annual or multi-year)

Support Type:

Line #	Description of Covered Machine/Accessory/Option	Coverage Code*	Location / Site ID	Part Number	Serial Number	Volume Code	Service Branch	Sales Rep	# Annual Inspections	Base Amt. (Annual)	Zone	Zone Amount	Total Annual Amount
1	Jetscan Model 4082			406-9902-00			1649	789		310.00	3	54.00	364.00
2	Jetscan Fitness Sorter 4199			409-9919-00			1649	789		900.00	3	54.00	954.00
3	Jetscan Model 4082			406-9902-00			1649	789		310.00	3	54.00	364.00
4	Jetscan Model 4082			406-9902-00			1649	789		310.00	3	54.00	364.00
5	Jetscan Fitness 4199			409-9919-00			1649	789		900.00	3	54.00	954.00
6													
7													
8													
Adder for Support**										Total Base Amounts:	1,210.00 X	%	
Assigned Contract #										1st Year	1,210.00 X	%	
Contract Effective Date:										Line(s) Effective Date:		Contract Total	2,700.00
Machine Installation Date:												Tax Additional	

\* Each Coverage Code relates to a specific product coverage as described in Section 4 on page 2.

\*\* See section 7 on Page 2.

## Terms and Conditions (Additional terms and conditions listed on Page 2)

In consideration of the charges above, payment each year in advance, we agree to perform maintenance service and furnish necessary replacement parts, unless otherwise excluded, on the Cummins Allison Corp. (subsequently referred to as C-A) equipment listed by part number and serial number above, subject to the following terms:

## SECTION 1 - PERIODIC INSPECTION

- On user's premises to inspect, test, clean, lubricate, adjust and perform all other maintenance operations which sixth inspection and testing shall include in order to minimize the possibility of break down and to maintain in proper working order each machine covered by this agreement.
- For the purpose of such inspection each machine listed on this contract must be made available to C-A personnel for the time period required to perform all maintenance functions.

## SECTION 2 - EMERGENCY SERVICE:

- This agreement includes emergency service requested by the user and found by the service representative to be necessary to keep the equipment in good operating condition.
- This agreement includes all travel expenses except on emergency calls requested by users located more than 50 miles from the local C-A office ("local" here will be marked with an "X" at top of form), in which case a charge for mileage only parcel to parcel will be made.

## SECTION 3 - PARTS COVERAGE

- This agreement includes all parts indicated under the applicable paragraph(s) identified in this Coverage Code column above and described in Section 4.
- Specific Product Coverage, which can be installed without the use of shop facilities and on user's premises. It does not include supplies or consumable parts excluded under Section 4 Specific Product Coverage.

- When, in C-A opinion, a shop reconditioning is necessary and on-site repair and parts replacement cannot keep the machine(s) in satisfactory operating condition, C-A will submit a cost estimate. Such work (both parts and labor), if authorized by the customer, will be in addition to the service contract charges.

Subscriber acknowledges having read and understood all pages of this agreement. The terms and conditions on page 2 of this document are part of this agreement.

Purchaser's Authorized Signature

Date

Printed Name and Title of Authorized Signer

Cummins Authorized Representative

Date

Please mail signed form to office listed at top of this page.

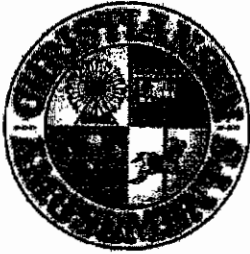
Copy 1 - Customer

Copy 2 - Field Office

Copy 3 - Home Office

Form: 024-2079

Rev 2 02/06C



## *Our Business is FUN!!*

This agreement is entered into this 4<sup>th</sup> day of July, 2010 by and between Christiansen Amusements, Inc., hereinafter termed "SHOWS" and Santa Ysabel Casino, hereinafter termed "SPONSOR." The term "SPONSOR" as used in this agreement can refer to any and all of "SPONSOR'S" Staff and Associates, Agents or Coordinators and every person acting with, under, or in concert with said "SPONSOR" for the event detailed below.

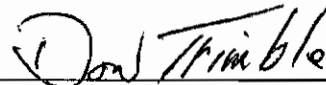
### NOW THEREFORE BE IT AGREED AS FOLLOWS:

- 1) That "SHOWS" agrees to provide two (2) carnival rides (Zipper and Go-Gator) for rental and use by "SPONSOR" for the event to take place at Santa Ysabel Casino, 25575 Hwy 79/PO Box 600, Santa Ysabel, CA 92070; Saturday July 17 and Sunday July 18, 2010, subject to the conditions and details listed below.
- 2) As compensation for the use of "SHOWS" ride, "SPONSOR" agrees to pay the sum of **\$11,000.00** payable to Christiansen Amusements. This sum is payable as follows: 50% upon signature of the agreement or by Friday, July 9, 2010 at the latest and the final 50% upon approval of the setup of the ride prior to the beginning of the event.
- 3) Rental includes transportation to and from the above location; set up of rides Friday, July 16, 2010; ride operators; ride operation from 12 pm to 11 pm 7/17 and 11 am to 10 pm 7/18.; tear-down of ride; and liability insurance certificate listing "SPONSOR" and any necessary entities as additional insured. Rental includes electrical power, which will be provided by "SHOWS" who will also provide all necessary cables and connectors for its rides.
- 4) Rental includes ride operation and operators for all riders based upon a ticket or wristband system as established by "SPONSOR." "SPONSOR" has control over the cost and distribution of all tickets to customers, whether customers must pay for tickets or they are provided on a complimentary basis. "SPONSOR" must provide all ticket sellers and control the selling system.
- 5) "SPONSOR" agrees to secure above property and obtain and pay for all permits and licenses for operating "SHOWS" ride for the event.
- 6) "SPONSOR" hereby agrees by signing to hold "SHOWS" harmless from any and all suits and/or claims for loss liabilities for any personal injuries to any person(s) or any damage(s) to the premises used for the event including any attorney fees necessary for defense by "SHOWS" for any such liability actions, not including general liability coverage as provided by "SHOWS" for its carnival rides.
- 7) "SHOWS" will leave the property area directly related to its rides in the same condition as prior to set up.
- 8) "SPONSOR" is responsible for any security services required for all set-up and operating hours of the event.
- 9) "SPONSOR" agrees that the "SHOWS" rides will only be used for the exclusive purpose of this specific event and no other use of the rides will be conducted or allowed.

Agreed to as signed by:

  
Santa Ysabel Casino

25575 Hwy 79/PO Box 600, Santa Ysabel, CA 92070; 760-787-2203; 760-782-0929 fax; nvargas@thesyrc.com

  
Print Name

7/5/10  
Date

  
Christiansen Amusements, Inc.

Bill Jacob  
Print Name

7-4-10  
Date



**Christiansen Amusements**  
P. O. Box 997, Escondido, CA 92033-0997  
(760) 735-8542 • Fax (760) 735-8543 • [info@amusements.com](mailto:info@amusements.com)





**Planned Maintenance  
Agreement Proposal**

Date: 12/03/07  
QT # Z07120007

**Submitted To:** Santa Ysabel Resort and Casino

**Bill To:** 25575 Highway 79 P.O. Box 600, Santa Ysabel, CA 92070

**Equipment Location:** 25575 Highway 79, Santa Ysabel, CA 92070

**Attn:** Mr. John DeLuna      **Phone:** 760.782.0909 x. 222      **Fax:** 760.782.0929

**Planned Maintenance For:** Kohler Emergency Generator & Automatic Transfer

**Annual Price:** \$ 1300.00 Tax Inc. Divided by (4) Equals \$ 325.00 Per Quarterly Visit

**Terms:** Net - 30

**Valid Until:** December 01, 2008

**INCLUSIONS:** Fleet Systems will perform the following Reliability Inspections & Maintenance Services, to include transportation, labor, and materials for work performed during regular business hours, Monday through Friday between the hours of 7am and 5pm (4) four times per year from acceptance of contract as follow:

1. Inspection of engine/generator controller for defects. Clean controller and check connections.
2. Check all fluid levels and top off as necessary. (Fuel is Excluded)
3. Inspect diesel fuel tank, day tank, fuel lines and fittings for defects. Repair if minor.
4. Check equipment for any fuel, coolant, and or oil leaks. Tighten fittings as necessary.
5. Inspect all engine drive belts, pulleys and hoses for defects. Adjust belts if necessary.
6. Inspect the radiator fan, shroud, and radiator core fins for restrictions, cleanliness and or defects.
7. Inspect block heaters for proper operation.
8. Inspect the exhaust system for any cracked or broken parts. Tighten all mounting as necessary.
9. Inspect the fuel injection pump, transfer pump and governor system for defects.
10. Check and clean batteries to include terminals. Check electrolyte and specific gravity levels. Apply terminal preservative. Check battery cables and connections.
11. Inspect auxiliary battery charger for proper operation. Adjust as necessary.

Continues Page Two



Page Two

12. Check air cleaners and filters for any restrictions or defects. Clean as necessary.
13. Check turbo charger for tolerance and freedom of movement.
14. Inspect the generator main circuit breaker for loose connections and heat marks.
15. Inspect generator alternator for heat and wear. Blow dust out of stator. Inspect bearing if possible.
16. Check electrical wiring for signs of abrasion, chaffing, and or corrosion at connectors.
17. Inspect the transfer switch for any defects. Use infrared temp gun check for hot connections. Ensure the exercise clock is operational and is set to the customer specific time for exercise. Lubricate mechanical parts if possible.
18. Upon completion of items 1 – 17 start and run the equipment. Record all gauge readings. Test engine safety shut down devices to ensure proper safety operation. Check voltage and frequency outputs at the ATS emergency input terminals. Make adjustments if necessary.
19. While the unit is operating check for any fuel, oil, or coolant leaks. Repair minor leaks if possible.
20. Check battery charging alternator for proper DC voltage. Adjust if necessary.
21. Check fuel and governor system for proper operation. Adjust governor if necessary.
22. Check equipment for abnormal vibrations and noises. Document any such findings.
23. If practical and upon owners permission, simulate an under load power failure to ensure the proper operation of the emergency backup system. Owner must make loads available, and it must be practical for the end users of the electrical systems for such testing to be performed.
24. Check, clean and spot paint, equipment, if necessary to prevent corrosion and preserve the overall appearance of the piece of equipment.
25. Provide a written report of the condition of the equipment to the end user responsible for the equipment. Note all discrepancies found. A formal proposal will be submitted to the end user within (3) working days for the cost of the repair. If the unit is out of service a proposal will be provided immediately.

#### **ANNUAL MAINTENANCE SERVICES (Once per year) Included in the Annual Price.**

- a. All items in the preceding visits.
- b. Change engine lubricating oil and filters as per manufacturer specification.
- c. Change or clean air cleaner filters as per manufacturer specification.
- d. Replace diesel fuel filters as per manufacturer specification.
- e. Test oil for contamination and abnormal engine wear. Test Antifreeze for proper concentration. Test report to be provided to end user.
- f. Dispose of hazardous waste from service in accordance with California State Law.

In between services it is the owners/operators responsibility to check the general conditions and fluid levels of the equipment. If ever in doubt call Fleet Systems for advice.

Continues Page Three

Page Three

**ADDITIVE ITEMS:** Generator manufacturers often recommend the following services to prolong the life of their equipment. These services may be added to your base service contract for an additional fee, if requested. Upon acceptance, initial next to the price and this service will be added to your contract.

**1) Resistive Load Bank Testing**

Your new or existing emergency generator should be tested once per month for a period of 30 minutes, preferably with a building load. The system should be load bank tested at full rated load a minimum of once a year. The test should be for (1) one hour to ensure the proper operation of the stand-by system. A (1) one hour resistive load bank test to include all cable, equipment, labor and travel is:

Total Annual Price \$ 550.00 Initial for this Option JD

**2) Automatic Transfer Switch (ATS) Service and Testing.**

An extremely critical aspect of the emergency generators operation is the function of the ATS. The emergency generator may function properly but if the ATS does not function properly, you will still be in the dark without emergency power.

For those customers who are unable to perform a simulated power outage by dropping out the main circuit breaker during a normal business hour, we will provide an ATS service and test on a pre-designated Saturday or after hours. The ATS service will require that the power be turned off to the transfer switch for about 30 to 45 Minutes.

Total Annual Price \$ 275.00 for each switch. Initial for this Option \_\_\_\_\_

**3) Fuel Polishing**

Fuel polishing is a procedure that removes water and sediment contaminates which settle in the bottom of the fuel tank. These contaminates occur naturally over time. To combat this condition, fuel is pumped from the bottom of the tank and returned, once filtered to (1) micron, to the tank. This ensures proper generator operations with clean fuel being delivered to the equipment engine.

Total Annual price \$ 200.00 Initial for this option. JD

**EXCLUSIONS:** Customers building electrical systems, functions and or operations. This contract does not include any repairs to the equipment. All repairs to the equipment must be approved by the customer.

Continues Page Four



Page Four

**Contract Labor Rate:** \$ 85.00 per hour portal to portal during normal business hours Monday through Friday 0700 – 1700 on all service trouble calls above and beyond the maintenance contract.

**Contract Overtime Rate:** \$ 127.50 per hour portal to portal on all service trouble calls above and beyond the maintenance contract after normal business hours.

**Contract Double Time Rate:** \$ 170.00 per hour portal to portal on Sunday's and Holiday's.

**Mileage Charge:** \$ No Charge for Contract Customers.

**Truck Charge:** No Charge to Contract Customers.

**Diesel Fuel Delivery:** No labor, mileage, or truck charge 24/7 – 365 days a year. No minimum amount required.

**Diesel Fuel Price:** \$ Daily Market.

**Rental Generator Rates:** 20 % discount to Contract Customers if the rental is available with Fleet Systems.

This agreement may be canceled by either party with a thirty day written notice. If you have any questions or comments, I would welcome your call.

**SUBMITTED BY:** Zachery Tooker  
Service Account Coordinator

I/WE accept the proposal and agree to pay the said amount listed on page one of this agreement.

Customer Signature: Phil Pepple Print Name PHIL PEPPE Date 12-3-07

Payment Method: NET -30 P.O. # \_\_\_\_\_

**Thank You! Your Business is Appreciated  
an We Hope to Serve You Soon**



12208 Industry Rd. Lakeside, CA 92040  
Office (619) 938-8200 \* (619) 938-8202  
www.bcew.com

Dec 13, 2007

Santa Ysabel Casino  
Attn: Sandra Smith

~~P.O. Box 130~~ P.O. Box 600  
Santa Ysabel, CA 92070

Your new Bay City Electric Works - Account Ref.: SAN40 Credit Limit \$1,000.00

Dear Sir or Madam:

Thank you for selecting Bay City Electric Works, I'm pleased to inform you that your account has been established. If you have any questions regarding your account with us, please refer to the account number listed above.

Two copies of this "Account Confirmation Letter" are enclosed. Please sign and date both copies, return one to us and retain the other for your files.

The following is our understanding of how we'll be doing business. Please review this and call me if you have any questions.

**Terms and Conditions of Sale**

**Terms of Sale:** Payment is due 30 days from the date of invoice.

**Statements:** Statements are sent at the end of each month and detail all open invoices and unapplied credits.

**Late Charges:** A 1 1/2% per month (18% APR) late charge will be added to all invoices unpaid after 30 Days

**In the event of default** of said Terms and Conditions of Sale, the party at fault will be liable for any cost and Attorney fees that may result from such default.

Please be aware that we take our own commitments to terms seriously. We expect our customers to do the same.

Your signature below confirms that you understand and agree to the above terms and conditions of sale. We hope our relationship is a long term one. Please feel free to call if you have any questions, our staff is at your disposal. Thank you for your patronage.

Sincerely,

Patricia Alarcon, Credit Manager  
(619) 938-8200 ext. 312

Sandra Smith  
Name

Controller/HR Director  
Title

12/27/07  
Date

PLEASE RETURN COPY WITHIN 5 DAYS

## **LICENSE AGREEMENT**

This Agreement is effective as of November 7th, 2011 by and between BetWiser Games, LLC, a Nevada Limited Liability Company with its principal place of business at 9873 Ashton Pines Ct., Las Vegas, NV 89147 ("Licensor") and Santa Ysabel Casino ("Licensee"), whose principal place of business is 25575 Hwy 79, Santa Ysabel, CA 92070.

### **RECITALS**

A. Licensor owns all rights with respect to a blackjack side bet known as "Buster Blackjack<sup>®</sup>" ("the Game"), including all trademarks, copyrights, patents, instructions, manuals and other intellectual property rights relating to the manufacture, use, lease, license and/or sale of the Game (collectively the "Licensed Game").

B. Licensee wishes to license from Licensor, and Licensor is willing to license to Licensee, the Licensed Game on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and warranties contained in this Agreement, and subject to the terms and conditions set forth herein, the parties agree as follows:

### **AGREEMENT**

#### **1. License**

1.1. **Grant of License.** Licensor hereby grants to Licensee the non-exclusive right and license to install, operate and use the Licensed Game. Licensee shall have no right to sub-license or assign this license.

1.2. Licensed Game shall not be played on an electronic table where no physical cards are used.

#### **2. License Fees**

##### **2.1. Royalties**

Licensee shall pay Licensor royalties based on the number of tables at which the Licensed Game is operated and dealt. Licensee shall operate four (4) tables. The royalty for the right to operate and deal four tables is two hundred forty dollars (\$240) per calendar month.

2.2. **Licensee's Discretion.** The number of hours the Licensed Game is played at each table shall be at Licensee's sole discretion.

2.3. **Payments.** All royalties due hereunder shall be paid to Licensor no later than the fifteenth (15<sup>th</sup>) day of the calendar month following the month in which such royalties accrued. Should the fifteenth (15<sup>th</sup>) day of the month fall on a Saturday, Sunday or legal holiday, Licensee shall have until the following working day to submit the payment.

2.4. **Late Fee and Interest.** In the event any royalty is not paid on or before the date on which it is due, Licensee shall pay to Licensor a late fee of three percent (3%) of the amount past due. Licensee shall also pay to Licensor interest at the rate of ten percent (10%) of the amount past due annually for the period it is not paid.

2.5. **Royalty Increase.** Licensors reserves the right to increase the royalty. Licensors shall give Licensee a notice of royalty increase sixty (60) days prior to the expiration of the Agreement.

2.6. **Inspection of Business Records.** Licensors or his representative shall be allowed to inspect Licensee's business records related to the Licensed Game during usual business hours at a mutually acceptable time no more than once each six month period. The expense of such audits shall be borne entirely by Licensors, unless there is a discrepancy in money owed of more than ten percent (10%) for any period audited.

3. **Warranties of Licensors.** So long as Licensee is not in breach of this Agreement, Licensors hereby indemnifies Licensee and forever holds Licensee harmless from and against all claims, suits, actions, proceedings, damages, loss or liability arising solely out of, based solely upon or solely in connection with the claim that use of the Licensed Game by Licensee is a violation of complainant's rights or is a violation of law. Licensors warrants that it has good title to the Licensed Game free and clear of all liens and claims, and that it is the inventor and sole owner of all patents, patent applications, trademarks, copyrights and intellectual property applicable to or necessary to the Licensed Game. Licensors further warrants that it has the power and authority to enter into this Agreement and to perform the obligations hereunder.

4. **Warranties of Licensee.** Licensee hereby indemnifies Licensors and forever holds Licensors harmless from and against all claims, suits, actions, proceedings, damages, loss or liability arising out of, based upon, related to or in connection with any breach of any of Licensee's warranties or agreements set forth in this agreement.

5. **Confidentiality.** Both parties agree to exercise due diligence to maintain the confidentiality of the terms and conditions and all other issues of this Agreement and further to maintain the confidentiality of details of the Licensed Game except as necessary to play the game.

6. **Conduct of Play.**

6.1. **Intellectual Property Use.** Licensee agrees to offer the Licensed Game only in the original form and conduct play solely in accordance with the rules provided by Licensors. Any modifications to the rules, table layouts, cards or other equipment necessary to the play of the Licensed Game must be approved in advance and in writing by Licensors.

6.2. **Identification of Licensors.** All brochures, marketing materials, table cover layouts, instructional literature and other literature advertising the Licensed Game shall contain the following statement: "**Buster Blackjack® is owned by BetWiser Games, LLC. US Patent 6,845,981.**"

7. **Term and Termination.**

7.1. **Term.** This Agreement shall be effective from the date first above written and shall continue in full force and effect for a term of two years following its effective date unless terminated in accordance with its terms as set forth below.

7.2. **Termination.**

7.2.1. Unless sooner terminated in accordance with the provisions herein, this Agreement shall continue for a period of two (2) years from its current expiration date.



Licensee shall give Licensor a written notice of termination forty-five (45) days prior to its current expiration date if Licensee does not wish to renew the Agreement.

7.2.2. Should either party default in any of the material obligations required in this Agreement to be performed or commit a breach of any of the terms thereof, the other party may terminate the Agreement by serving a written notice upon the defaulting party of the default or breach complained of, and the termination shall become effective thirty (30) days after the date of said notice unless the defaulting party shall have remedied the default or cured the breach within the thirty (30) day period.

7.3. **Payment on Termination.** In any event in which this Agreement is terminated, Licensee shall be obligated to pay to Licensor any royalty and fee which may be accrued but not yet paid within thirty days of termination. Any royalty not paid immediately shall be subject to the late fee and interest provided in this Agreement.

7.4. **Acts Authorizing Immediate Termination by Licensor.** The occurrence of any of the following events shall constitute good cause by Licensor, at its option and without prejudice to any other rights or remedies provided for hereunder at law or in equity, to terminate this Agreement immediately without prior notice in any of the following events:

7.4.1. If Licensee makes a general assignment for the benefit of creditors, or if a final judgment against Licensee remains unsatisfied for thirty (30) days or longer;

7.4.2. If execution is levied against Licensee's business or property;

7.4.3. If Licensee is in violation of any law, ordinance, rule or regulation of any governmental agency in connection with the operation of Licensee's business, and Licensee or sublicensee fails for a period of thirty (30) days after notification of non-compliance to comply with any such law;

7.4.4. If Licensee causes an assignment of this Agreement or rights conveyed herein or commits an act which might tend to defeat, diminish, or jeopardize Licensor's rights in and to the Licensed Game;

7.4.5. If Licensee abandons its business;

7.4.6. If Licensee makes any material misrepresentations relating to the Agreement;

7.4.7. If Licensee engages in conduct which reflects materially and unfavorably upon the operation and reputation of Licensor's business; or

7.4.8. If Licensee is convicted of a felony or any other criminal misconduct which is relevant to the operation of the business.

7.5. **Conditions Upon Termination of Agreement.**

7.5.1. Upon termination of this Agreement, Licensee shall (a) immediately discontinue use of the Licensed Game, (b) at no cost to Licensor, remove signs and materials which use any Licensed Properties, and (c) remove Licensee's name from any advertising, telephone listing, brochures, flyers, directories or other means of communication by which Licensee is identified with Licensor.

8. **GENERAL TERMS.**

8.1. **No Agency.** Licensee shall neither have nor exercise any authority, express, implied or apparent, to act on behalf of or as the agent of Licensor, other than as set forth in this Agreement, and shall take no action which might tend to create an apparent employer/employee, joint venture, or agency relationship between Licensor and Licensee. Licensee is, and shall remain, an independent contractor, responsible for all obligations and liabilities of, and for all losses or damage to, Licensee's business and for all claims and demands based upon damages or destruction of property or based upon injury, illness or death of any person or persons, directly or indirectly arising from or in connection with the operation of Licensee's business. Licensee's relationship with Licensor is that of a licensee and not an agent, and Licensee shall not have the right to bind Licensor to any agreements or obligations without the express written consent of Licensor.

8.2. **Warranty of Authority to Sign.** Each individual signing this contract on behalf of a corporate party warrants that he or she is legally empowered to enter into this contract on behalf of such party.

8.3. **Warranty of No Conflicting Agreements by Licensee.** Licensee represents that it is not a party to nor subject to agreements which might conflict with the terms of this Agreement and agrees not to enter into any such agreement during the Term.

8.4. **Attorneys' Fees and Costs.** If either party institutes any arbitration or suit against the other arising out of a breach of this Agreement, the prevailing party shall be entitled to attorney's fees and costs of suit.

8.5. **Entire Agreement.** This document contains the entire Agreement of the parties, and supersedes any former agreement between the parties concerning these matters. No modification of any term or condition of this Agreement shall be of any force or effect unless in writing and signed by Licensee and Licensor.

8.6. **Severable Agreement.** All provisions of this Agreement shall be severable, and if any provision is found to be invalid, such provision shall not affect the validity of the remaining provisions of the Agreement.

8.7. **No Forbearance of Right to Enforce.** No failure, forbearance, neglect or delay of any kind or extent on the part of Licensor in connection with the enforcement or exercise or any right pursuant to this Agreement shall affect or diminish Licensor's right to strictly enforce and take full benefit of each provision of this Agreement at any time whether at law for damages, in equity for injunctive relief, specific performance or otherwise. Time is of the essence with respect to all terms and conditions as contained in this Agreement.

8.8. **No Waiver by Either Party.** No waiver by either party of any provision of this Agreement shall constitute or be implied as a waiver of such party's right to enforce such provision at any time in the future.

8.9. **Notification of Infringement.** Licensee shall immediately inform Licensor of any suspected or known infringement or challenge to the Licensed Game, and shall assist and cooperate with Licensor in taking any such action as Licensor believes is necessary, at Licensor's expense, to protect any of its rights.

8.10. **Choice of Law.** This Agreement has been made and accepted in the State of California, United States of America, and shall be interpreted in accordance with and governed by the laws of the State of Nevada of the United States.

8.11. **Successors' Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of both parties and any successors and/or assignee, including, but not limited to, any successors and/or assignee of Licensed Games, trademarks, copyrights and technical information relating to Licensed Games. Any successors and/or assignees shall expressly assume and agree to perform this Agreement in the same manner and to the same extent that the parties would be required to perform it, as if no such succession or assignment had taken place.

8.12. **Notice.** All notices and other communications provided for herein must be in writing and shall be sufficiently given if delivered in person or mailed by certified or registered mail by Licensor or Licensee at the address appearing on the initial page of this Agreement unless notified in writing of any different address for purposes of this notice provision. Notices shall be deemed delivered when delivered in person or on the fifth day from the date it is placed for deposit as above set forth with postage fully prepaid.

8.13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

8.14. **Notification of Governmental Actions.** Each party agrees to notify the other in the event of receipt of documents or information from governmental agencies which relate to the legal status of the Game, and to provide the other with copies of any such documents in a timely fashion. Nothing in this clause shall obligate either party to disclose proprietary business information or other information which may jeopardize any on-going legal action or which is otherwise privileged by law.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year first written above.

**LICENSOR**

Name Stanley Ko

Signature Stanley Ko

Title Manager, BetWiser Games, LLC

**LICENSEE**

Name DAVID CHELETIE

Signature [Signature]

Title GM



## AZTEC LEASING, INC.

2215 VISTA RODEO DR.  
EL CAJON, CA 92019  
PHONE: (619) 443-6363

PO # \_\_\_\_\_ Lease Agreement # \_\_\_\_\_

## Office Equipment Lease Agreement

## EQUIPMENT

Equipment Make, Model & Type	Serial Number	Accessories Included
Sharp MX-3610N		Print / Scan / Fax / Staple
Sharp MX-M453N		Print / Scan / Fax
Sharp MX-B402		Print / Scan / Fax
Sharp MX-B402		Print / Scan

☐ See attached schedule for additional Equipment / Accessories

Equipment Location (if different from Billing Address) 25575 HWY 79 Santa Ysabel, CA 92070

## SUPPLIER

**Sharp Business Systems**

Company Name  
8670 Argent Street

Address  
Santee CA 92071

City State Zip

## PURCHASE OPTION AT END OF TERM

☒ Fair Market Value

## PARTIAL TERMS &amp; CONDITIONS

You have selected the equipment. The supplier and its representatives are not our agents and are not authorized to modify the terms of this lease. You are aware of the name of the manufacturer of each item of equipment and you will contact each manufacturer for a description of your warranty rights. We make no warranties to you, express or implied, as to the merchantability, fitness for a particular purpose, suitability, or otherwise. We provide the equipment to you as-is. We shall not be liable for consequential or special damages.

Your payment obligations are absolute and unconditional and are not subject to cancellation, reduction or setoff for any reason whatsoever. Both parties agree to waive all rights to a jury trial. This lease shall be governed by the laws of California. You consent to the jurisdiction and venue of federal and state courts in California.

By signing this lease, you agree to the terms on the front and reverse sides. Oral agreements or commitments to loan money, extend credit or forbear from enforcing repayment of a debt, including promises to extend or renew such debt, are not enforceable. To protect you and us from misunderstanding or disappointment, any agreements we reach covering such matters are contained in this writing, which is the complete and exclusive statement of the agreement between us, except as we may later agree in writing to modify it.

## PAYMENT INFORMATION

Lease Payment \$ 2,460.00 Term: 48 months  
(plus applicable taxes)

Billing Period: ~~Monthly~~ Quarterly - 16 payments

The following additional payments are due on the date this Agreement is signed by you:

SECURITY DEPOSIT: \$ 0

ADVANCE PAYMENT: \$ 0 Applied To: ☐ First ☐ Last  
(plus applicable taxes)

DOCUMENT FEE: \$75.00 (included on first invoice)

## LESSOR ("We", "Us")

Aztec Leasing, Inc.  
2215 Vista Rodeo Dr., El Cajon, CA 92019

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

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

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

Date: \_\_\_\_\_

## LESSEE ("You")

Santa Ysabel Resort & Casino

Fully Legal Name D&A

AP Contact Name Phone  
P.O. Box 600 760-787-0909

Billing Address  
Santa Ysabel CA 92070  
City State Zip

## LESSEE ACCEPTANCE

Signed and Accepted by: [Signature]

Print Name: CHARLES M BAUMAN

Title: CONTROLLER

Date: 7/21/11 Fed Tax ID: 20-1366478



**PERMISSION TO ENTER TO REPOSSESS**

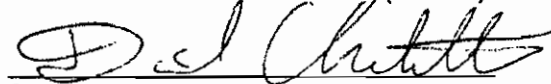
The Santa Ysabel Resort & Casino ("Lessee"), under its authority to enter into contract purchases, in this case the lease of the following described Equipment:

Sharp MX-3610N, MX-M453N, MX-B402 and MX-B402 from Aztec Leasing, Inc.  
("Lessor")

Hereby grants the Lessor and its successors and assigns permission to enter Santa Ysabel Resort & Casino for the purpose of enforcing any valid rights under the Lease including repossession of the described Equipment in accordance with the Lease and pursuant to applicable law.

Be it further resolved, that the Santa Ysabel Resort & Casino waives its rights to the extent necessary to make the terms and conditions of the Lease mutually enforceable by the parties to the Lease.

**Santa Ysabel Resort & Casino (Lessee)**



Signature

DAVID CHELETTE

Name

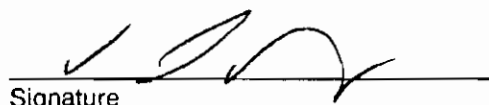
GENERAL MANAGER

Title

7-22-11

Date

**Certification from Iipay Nation of Santa Ysabel Tribe**



Signature

Virgil Perez

Name

Tribal chairman

Title

7-22-11

Date

# Agilysys...

Agreement #20090901-SYC

## Universal Agreement

This Universal Agreement ("**Agreement**") is entered into and made effective as of the date last executed (the "**Effective Date**"), by and between Agilysys NV, LLC, a Delaware limited liability company ("**Agilysys**"), with its principal place of business at 11545 Wills Road, Suite 100, Alpharetta, GA 30009 and Santa Ysabel Resort and Casino with its principal place of business at 25575 Highway 79, Santa Ysabel, CA 92070, ("**Customer**"). The terms and conditions on the following pages are part of this Agreement. Customer acknowledges that it has read this Agreement, including all Supplements, understands it and agrees to be bound by its terms and conditions. Customer agrees that this Agreement and any Supplements represent the entire understanding and agreement between the parties with respect to the subject matter hereof, superseding all proposals, negotiations, understandings and representations or prior agreements, oral or written, and all other communications between the parties. Customer further agrees that the terms of any future purchases will be set forth in Supplements to this Universal Agreement and governed by these terms.

### "AGILYSYS"

Company: Agilysys NV, LLC

Signature: \_\_\_\_\_

Tina Stehle  
 Name (Print or Type)

Senior VP and General Manager  
 Title

Date \_\_\_\_\_

### "CUSTOMER"

Company: Santa Ysabel Resort and Casino

Signature: \_\_\_\_\_

Don Trimble  
 Name (Print or Type)

San Mgr  
 Title
Date April 22, 2010

Return signed contract to:

Lauri Williams, Contracts Administrator  
 Agilysys NV, LLC  
 Hollister Avenue, Suite 120  
 Santa Barbara, California 93111  
 E-mail: [lauri.williams@agilysys.com](mailto:lauri.williams@agilysys.com)

## Agreement Terms

### 1. DEFINITIONS.

1.1. **"Customer"** means the party designated on the cover sheet of this agreement and executing and/or initialing this Agreement and any Supplement(s). Additionally, Customer is the Licensee of Software licensed under the terms of this Agreement.

1.2. **"Documentation"** means the documentation provided to Customer for use with Software.

1.3. **"Equipment"** means the point-of-sale terminals, peripheral devices, printers, network communication devices, computers and other equipment which is identified in a Supplement to this Agreement. Equipment also means all software pre-loaded or installed upon such Equipment as well third-party software and packaged services identified in a Supplement which may be resold or sublicensed by Agilysys.

1.4. **"Intellectual Property Rights"** means patent rights (including patent applications and disclosures), copyrights, trademarks, trade secrets, know-how and any other Intellectual property rights recognized in any jurisdiction in the world.

1.5. **"Professional Services"** means the installation, integration, training or other professional services generally described in Section 3.1 and specified in a Supplement to this Agreement.

1.6. **"Professional Service Fees"** means the fees charged to Customer by Agilysys for Professional Services.

1.7. **"Purchase Price"** means the total amount specified in a Supplement for Equipment to be purchased and Software to be licensed.

1.8. **"Services"** means the Professional Services, Support Services and Subscription Services provided by Agilysys.

1.9. **"Supplement"** means a document by which Customer orders Equipment, Software or Services. The document may be an Agilysys quotation form accepted by Customer in a purchase order, shipment authorization or other document signed or subsequently acknowledged in writing by authorized representatives of the parties, all of which shall be governed by the terms of this Agreement. Any such ordering document shall specify the Equipment to be purchased, the Software to be licensed, the Services to be provided, quantity, price, and the bill-to and ship-to addresses, as applicable, and such other information as the parties may agree.

1.10. **"Support Fees"** means the fees charged by Agilysys for the services described in Section 3.2.

1.11. **"Support Services"** means the support services for the Software generally described in Section 3.3 and specified in Supplements to this Agreement.

1.12. **"Subscription Fees"** means the fees for Subscription Services charged by Agilysys for the services described in Section 3.4.

1.13. **"Subscription Services"** means the Software hosting services generally described in Section 3.4 and specified in Supplements to this Agreement for the Software licensed to Customer by Agilysys.

1.14. **"Software"** means the Agilysys software products, in object code form, and related Documentation specified in a Supplement including any error corrections, modifications and updates thereto licensed by Agilysys to Customer under this Agreement.

### 2. LICENSE.

2.1. **Grant of License.** Subject to Customer's compliance with the terms and conditions of this Agreement (including any applicable Supplement), Agilysys grants to Customer a non-exclusive, nontransferable license: (a) to use the Software specified in a Supplement with the Equipment also specified in a Supplement, and only for Customer's internal use; and (b) to copy the Software as reasonably necessary for internal archival purposes. All copies of the Software shall include all copyright, trademark and other proprietary notices as are contained on or in the original. Customer may not transfer or assign Software licenses, without consent of Agilysys. Any attempt by Customer to transfer or assign its license rights or obligations under this Agreement shall be void and of no effect. Software licensed as part of this Agreement may incorporate an electronic repossession device which



Agilysys can, and will, activate in the event that Customer does not pay, in full, to Agilysys all fees due for such Software licenses. Customer understands that the electronic repossession device will prevent the Software from operating. Upon Agilysys' receipt of all payments due for Software, Agilysys will disconnect the electronic repossession device.

**2.2 License Restrictions.** Except as expressly authorized in this Agreement, Customer will not: (a) copy or modify the Software, in whole or in part except as permitted in Section 2.1(b); (b) transfer, sublicense or otherwise distribute the Software to any third party; (c) use the Software to provide service bureau, time sharing, application services provider, hosting or other computer services to third parties, or otherwise make the functionality of the Software available to third parties except as may be provided in a Supplement for Agilysys' Subscription Services; or (d) disassemble, decompile or reverse engineer the Software nor permit any third party to do so, except to the extent such restrictions are prohibited by law. Customer shall comply with any additional requirements provided in the Supplement(s) applicable for particular Software.

**2.3 Limited Rights.** Customer's rights in the Software will be limited to those expressly granted in this Agreement. Agilysys reserves all rights and licenses in and to the Software not expressly granted to Customer herein.

**2.4 Ownership.** As between Agilysys and Customer, Agilysys owns all worldwide right, title and interest in and to the Software, including all worldwide Intellectual Property Rights therein. Customer will not delete or in any manner alter the copyright, trademark, and other proprietary rights notices appearing on the Software as delivered to Customer. Agilysys' obligations to obtain governmental licensure is dependent upon, and Customer hereby agrees to, cooperate with the governmental registration authorities. If at the time of Software delivery Agilysys has not for any reason obtained all requisite governmental licenses, Customer may return all such Software (including all copies) and request refund all fees or deposits paid which shall be promptly refunded by Agilysys.

### 3. SERVICES.

**3.1 Professional Services.** Subject to Customer's compliance with the terms and conditions of this Agreement, Agilysys will provide such Professional Services as are designated in Supplements to this Agreement. Professional Services may include installation services to be performed by third parties only if such third party is under contract with Agilysys, and may include customized software development services to be performed by Agilysys' professional services organization. Professional Services may not be provided to Customers who perform or permit installation not approved by Agilysys. All Intellectual Property Rights developed by Agilysys alone or jointly with Customer in connection with any Professional Services shall be owned by Agilysys and, unless otherwise specified in a Supplement, Customer shall be deemed to have a non-exclusive, nontransferable license to use such Intellectual Property Rights consistent with the license granted in Section 2.1 or as otherwise expressly set forth in a Supplement. All Professional Services will be subject to and performed in accordance with Agilysys' professional services policy. Agilysys reserves the right to make changes to its professional services policy and prospectively change its fees at any time however any fee changes shall not apply to Professional Services set forth and undertaken under a signed Supplement.

**3.2 Support Services.** Subject to Customer's compliance with the terms and conditions of this Agreement (including, without limitation, payment of outstanding invoices and annual support fees), Agilysys will provide Customer with Support Services for the Software specified in Supplements to this Agreement. All Support Services will be subject to and performed in accordance with Agilysys' support policy. Agilysys reserves the right to make changes to its support policy and prospectively change its fees at any time.

**3.3 Exclusions to Support Services and Subscription Services.** Agilysys will have no obligation to provide Support Services or Subscription Services of any kind for problems in the operation or performance of the Software to the extent caused by any of the following: (a) Customer use of software or hardware products not approved by Agilysys for use in conjunction with the Software; (b) modifications to the Software made by any party without Agilysys' express written authorization; (c) Customer's use of the Software other than as authorized in this Agreement (including Supplements) or as provided in the Documentation; or (d) Customer's use of the Software without use of any error corrections or updates thereto provided by Agilysys (a "**Customer-Generated Error**"). Services may not be provided to Customers who permit unauthorized installation or who perform self-installations that have not received prior written approval from Agilysys. If Agilysys determines that it is necessary to perform Support Services or Subscription Services for a problem in the operation or performance of the Software that is caused by a Customer-Generated Error, then Agilysys will notify Customer thereof as soon as Agilysys is aware of such Customer-Generated Error and Agilysys will have the right to invoice Customer at



Agilysys' then-current published time and materials rates for all such Services performed by Agilysys. Agilysys shall have no support obligations of any kind with regard to the Equipment provided however that Agilysys may, in its sole discretion, offer Customer a separate hardware maintenance service contract with respect to the Equipment.

**3.4 Subscription Services.** Subject to Customer's compliance with the terms and conditions of this Agreement, Agilysys will provide Customer with Subscription Services for the Software specified in Supplements to this Agreement. All Subscription Services will be subject to and performed in accordance with Agilysys' service level policies in effect at the time. Agilysys reserves the right to make changes to its service level policy and prospectively change its fees at any time however any fee changes shall not apply to Subscription Services set forth and undertaken under a signed Supplement.

**3.5 Non-solicitation.** During the term of this Agreement, and for one (1) year thereafter, neither party shall, without the written permission of the other, solicit, hire, or otherwise engage, directly or indirectly, the services of any person who has been an employee of the other or its affiliates. Notwithstanding the foregoing, the parties acknowledge and agree that internet, newsletter, newspaper or other job postings in general circulation shall not be deemed to be solicitation for the purposes of this Agreement.

#### **4. ORDERING AND DELIVERY.**

**4.1 Ordering.** Customer's signature on a Supplement shall stand as Customer's firm order to purchase the Software, Equipment and Services specified in the Supplement. Customer may submit Supplements to Agilysys for the purchase of Equipment, licenses for Software and the provision of Services. No Supplement will be deemed accepted by Agilysys unless and until Agilysys accepts such Supplement in writing or unless Agilysys ships the order to Customer. Unless the parties expressly agree to modify the terms of this Agreement in a Supplement, any terms and conditions contained in any Supplement that are inconsistent with or in addition to the terms and conditions of this Agreement will be deemed stricken from such Supplement. Notwithstanding the foregoing, any price quotation made by Agilysys under this Agreement shall remain valid and in effect for a period of thirty (30) days following the date of such quotation, unless a different period is specified in such quotation.

**4.2 Delivery, Freight Costs and Risk of Loss.** Unless otherwise specified in a Supplement, all Equipment and Software will be shipped F.O.B. Origin, freight prepaid and charged back to Customer. Shipments will be made to location(s) or agent(s) designated by Customer in the United States unless Agilysys agrees to export Equipment or Software in a Supplement executed by an authorized representative. Customer will file any claims for damages directly with the carrier. Agilysys is authorized to select the carrier unless otherwise agreed. Agilysys will invoice Customer for shipping and handling charges upon shipment. Agilysys will use its reasonable efforts to accomplish delivery by any delivery date specified in a Supplement; however, unless otherwise expressly agreed in writing by Agilysys, Agilysys will not be liable for any expenses or damages incurred as a result of actual delivery after such indicated date, if any. Customer shall bear the risk of damage from fire, the elements or other loss from the time of and after shipment.

**4.3 Equipment Installation.** Customer shall make available and agrees to promptly pay for all costs associated with providing a suitable place of installation and the necessary electrical power, outlets and air conditioning required for operating the Equipment as defined in the Equipment manufacturer's installation manual or other documentation. Customer shall pay for all unusual installation charges such as structural alterations and rental of heavy equipment necessary to install the Equipment at the location of installation.

**4.4 Security Interest.** Customer hereby grants to Agilysys, its successors and assigns, a purchase money security interest in the Equipment and all proceeds thereof to secure the prompt payment by Customer when due of all amounts payable to Agilysys and all other obligations of Customer contained in this Agreement. If Customer defaults in payment of any amounts due herein or fails to perform any provision of this Agreement, Agilysys shall have the right, after ten (10) days of such default or failure to pay, to enter the premises of Customer and remove and repossess any and all of the Equipment with or without notice or demand and in addition, shall have the right to exercise such other rights and remedies as may be available to Agilysys under this Agreement or by law.

**4.5 Returns.** Customer may return Equipment only with Agilysys' prior consent. Upon confirmation of right to return, Agilysys shall issue or cause to be issued a Return Material Authorization. Customer shall return Equipment freight prepaid, in accordance with Agilysys' instructions in original packaging and in good condition, without alteration. Customer assumes risk of loss for returned Equipment until receipt by Agilysys or its supplier at the designated return location. Upon receipt of returned Equipment in accordance with this Section 4.5, Agilysys has the right to issue and Customer agrees to accept a credit memo in the amount of the value of the

returned Equipment. For a period of one (1) year after issuance, the credit memo may be used as a credit against Agilysys invoices for future purchases.

**4.6 Collateral Documents.** Customer agrees to sign any license terms or other third-party documentation reasonably required by Equipment manufacturers to accompany Equipment resold by Agilysys to Customer.

## **5. FEES.**

**5.1 Fees.** Customer will pay Agilysys the Purchase Price in the amounts and upon the terms set forth in a Supplement.

**5.2 Professional Service Fees.** Agilysys' quotations for fees for Professional Services may be described in a Supplement but are only Agilysys' good faith estimates unless otherwise expressly agreed in a Supplement. The actual fees for Professional Services will be billed based on work performed at Agilysys' then-prevailing standard rates. Should Agilysys' personnel providing Professional Services be requested by Customer to work on a weekend or a recognized holiday, Agilysys will issue its invoice for such services at its standard weekend and holiday rates. Agilysys will use reasonable efforts to notify Customer if Agilysys determine that the actual costs are likely to exceed Agilysys' estimates.

**5.3 Support Fees.** The fees for Support Services shall be assessed on an annual basis in advance at Agilysys' then-current rates and shall be non-refundable. Support Services shall renew from year to year however, Agilysys may suspend or terminate Support Services if Customer fails to pay annual renewal fees or any Agilysys invoices when due. Pursuant to the provisions of Section 10, Support Services may be suspended in the event that Customer does not comply with the terms of this Agreement (including, without limitation, payment of annual support fees). If Customer terminates the Support Services and later desires to renew such Support Services, Agilysys may, in its sole discretion, agree to renew such Support Services.

**5.4 Expenses.** Customer will reimburse Agilysys for any reasonable out-of-pocket expenses incurred by Agilysys in connection with performing any Services under this Agreement. All such amounts will be due and payable within thirty (30) days after the date of Agilysys' invoice.

**5.5 Interest.** All past due amounts (except with respect to charges then under reasonable and good faith dispute) will incur interest at a rate of 1.5% per month or the maximum rate permitted by law, whichever is less. Customer will reimburse Agilysys for all reasonable costs and expenses incurred in collecting any overdue amounts.

**5.6 Additional Payment Terms and Taxes.** Prices are quoted, and Customer will pay all amounts due under this Agreement in U.S. currency. All fees payable under this Agreement are net amounts and are payable in full, without deduction for taxes or duties of any kind. However, if Customer provides Agilysys with proof of Customer's entitlement to tax exemption, Agilysys will not charge Customer fees or charges for which Customer is tax-exempt or shall credit back to Customer such fees or charges which Customer has paid. Customer will be responsible for, and will promptly pay, all taxes and duties of any kind (including but not limited to sales, use and withholding taxes) associated with this Agreement or Customer's receipt or use of the Software and Services, except for taxes based on Agilysys' net income.

**5.7 Subscription Fees.** Customer will pay the Subscription Fees as provided in a Supplement. If no payment terms are provided in a Supplement for Subscription Services, Customer will pay Agilysys within thirty (30) days after the date of Agilysys' invoice for such Services. Subscription Fees shall be non-refundable. If Customer's account is thirty (30) days or more overdue (except with respect to charges then under reasonable and good faith dispute), in addition to any of Agilysys' other rights or remedies, Agilysys reserves the right to suspend the Subscription Services, without liability to Customer, until such amounts are paid in full.

## **6. WARRANTIES.**

**6.1 Equipment Warranty.** Equipment purchased under this Agreement will be subject to any warranties provided by the manufacturers of such Equipment. Agilysys warrants that, at the time the Equipment is shipped, Agilysys will be the lawful owner of the Equipment, free and clear of any liens and encumbrances (other than those which may arise from this Agreement) and will have full right, power and authority to sell the same to Customer. Agilysys makes no warranty of any kind with regard to the Equipment. Customer, recognizing that Agilysys is not the manufacturer of Equipment expressly waives any claim against Agilysys based upon any infringement or alleged infringement of any patent with respect to Equipment. Agilysys does not warrant that the Equipment will meet Customer's requirements, that the operation of the Equipment will be error-free or uninterrupted or that all errors will be corrected.



Agilysys expressly denies the authority of any of its employees or agents to make representations or warranties on Agilysys' behalf that are not included in this Agreement. Customer acknowledges and agrees that in entering into this Agreement, Customer has made its own independent investigation of the Equipment and determined that it is suitable for Customer's intended use and purpose.

**6.2 Software Warranty.** Agilysys warrants that it has the right to license the Software. Agilysys warrants that as of the date of shipment the Software will perform in all material respects in accordance with the functional specifications which are in effect for such Software at that time. If the Customer believes there is a Software nonconformity such that it does not meet functional specifications which are in effect at that time, the Customer shall notify Agilysys within five (5) days of delivery. Agilysys does not warrant that the functions contained in a licensed program will meet the Customer's requirements or will operate in the combination which may be selected for use by the Customer, or that the operation of the licensed program will be uninterrupted or error free or that all program defects will be corrected. As Customer's sole remedy and Agilysys' entire liability for any breach of these warranties, Agilysys will, at its option: (a) promptly correct any Software that fails to meet this limited warranty; (b) provide Customer with a reasonable procedure to circumvent the nonconformity; or (c) refund the license fees paid by Customer for the non-conforming Software upon Customer's return of such Software to Agilysys.

**6.3 Subscription Services Warranty.** Agilysys warrants that the Subscription Services will be performed in all material respects with Agilysys' service level policy as in effect from time to time. As Customer's sole remedy and Agilysys' entire liability for any breach of this warranty, Agilysys will, at its option: (a) promptly correct any Subscription Services that fail to meet this limited warranty; (b) provide Customer with a reasonable procedure to circumvent the nonconformity; or (c) refund the fees paid by Customer for the non-conforming Subscription Services.

**6.4 Disclaimer of Warranties.** EXCEPT AS PROVIDED ABOVE, AGILYSYS MAKES NO WARRANTY OF ANY KIND WITH REGARD TO THE EQUIPMENT, SOFTWARE AND SERVICES. AGILYSYS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM AGILYSYS OR ELSEWHERE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. AGILYSYS SHALL NOT BE LIABLE FOR DAMAGES, INCLUDING SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE EQUIPMENT OR ITS USE BY CUSTOMER, AND SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH AGILYSYS' FAILURE TO PERFORM ITS OBLIGATIONS HEREUNDER.

**6.5 Equipment Obsolescence.** Customer agrees that the responsibility for Equipment obsolescence shall be Customer's alone, and that Agilysys shall not be responsible for its inability to meet any service level standards resulting from Equipment obsolescence, as Agilysys in its sole discretion may determine.

## **7. INDEMNIFICATION.**

**7.1 Infringement Indemnity.** Subject to Customer's compliance with the terms and conditions of this Agreement, Agilysys will, at its option, defend or settle any action brought against Customer to the extent that it is based upon a claim that the Software, as provided by Agilysys to Customer under this Agreement and used within the scope of this Agreement, infringes any U.S. patent or any copyright, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are fully and finally awarded by a court of competent jurisdiction, without opportunity for appeal, against Customer, provided that Customer: (a) promptly notifies Agilysys in writing of the claim; (b) grants Agilysys sole control of the defense and settlement of the claim; and (c) provides Agilysys, at Agilysys' expense, with all assistance, information and authority reasonably required for the defense or settlement of the claim.

**7.2 Injunctions.** If Customer's use of any of the Software hereunder is, or in Agilysys' opinion is likely to be, enjoined due to the type of claim specified in Section 7.1 above, Agilysys may, at its sole option and expense: (a) procure for Customer the right to continue using such Software under the terms of this Agreement; (b) replace or modify such Software so that it is non-infringing and substantially equivalent in function to the enjoined Software; or (c) if options (a) and (b) above cannot be accomplished despite Agilysys' reasonable efforts, then Agilysys may terminate Customer's rights and Agilysys' obligations hereunder with respect to such Software and refund to Customer the unamortized portion of the license fees paid for such Software, based upon a straight-line three (3) year depreciation commencing as of the date of receipt by Customer of such Software.

**7.3 Exclusions.** Notwithstanding the terms of Section 7.1, Agilysys will have no obligation of indemnity or liability otherwise for any infringement claim of any kind to the extent that it results from: (a) modifications to the Software made by a party other than Agilysys or Agilysys' authorized representative; (b) the combination, operation or use of the Software with equipment, devices, software or data not supplied by Agilysys, if a claim would not have occurred but for such combination, operation or use; (c) Customer's failure to use updated or modified Software provided by Agilysys to avoid a claim; (d) Agilysys' compliance with any designs, specifications or plans provided by Customer; or (e) Customer's use of the Software other than in accordance with this Agreement or the Documentation.

**7.4 Sole Remedy.** THE PROVISIONS OF THIS SECTION 7 SET FORTH AGILYSYS' SOLE OBLIGATIONS, AND CUSTOMER'S SOLE REMEDIES, WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

## **8. CONFIDENTIALITY.**

**8.1 Definition.** "Confidential Information" means: (a) the Software; (b) any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents and equipment) that is either marked "confidential" or "proprietary" or would reasonably be assumed to be confidential based on its content or the context surrounding its disclosure; and (c) the specific terms and pricing set forth in this Agreement or in any Supplement.

**8.2 Exclusions.** Confidential Information does not include information that: (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (b) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (c) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (d) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; or (e) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession.

**8.3 Use and Disclosure Restrictions.** Each party will not use the other party's Confidential Information and will not disclose such Confidential Information to any third party outside the scope of this Agreement. Each party will use all reasonable efforts to maintain the confidentiality of all such Confidential Information in its possession or control, but in no event less than the efforts that such party ordinarily uses with respect to its own proprietary information of similar nature and importance. The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to contest such order or requirement; and (b) on a confidential basis to its affiliates or its legal or financial advisors. In addition, each party may disclose the terms and conditions of this Agreement on a confidential basis to present or future financial lenders, providers of venture capital and/or potential private investors in or acquirers of such party.

## **9. LIMITATION OF LIABILITY.**

**9.1 Total Liability.** OTHER THAN IN THE CASE OF A BREACH OF SECTION 2.2 (LICENSE RESTRICTIONS), IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF \$500,000 OR THE PURCHASE PRICE OR FEES PAID OR DUE BY CUSTOMER HEREUNDER FOR THE EQUIPMENT, SOFTWARE OR SERVICES GIVING RISE TO THE LIABILITY.

**9.2 Exclusion of Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SOFTWARE OR THE SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.



## 10. TERM AND TERMINATION.

**10.1 Term.** This Agreement will begin on the Effective Date and will remain in effect thereafter unless terminated earlier in accordance with the terms of this Agreement. Where the parties have executed a Supplement, the terms of this Agreement will continue to govern such Supplement until the obligations are completed as contemplated by the Supplement or the parties otherwise agree in writing. The term of each Software license granted by Agilysys hereunder will begin upon the date of shipment by Agilysys of the Software specified in an accepted Supplement and will remain in effect thereafter unless terminated in accordance with the terms of this Agreement.

**10.2 Termination for Cause.** Each party will have the right to terminate this Agreement if the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof. Termination of this Agreement pursuant to this Section 10.2 does not terminate any Software license granted hereunder or any Supplement for Services with respect to such other Software license unless expressly specified in the termination notice.

**10.3 Termination for Convenience.** Except for Subscription Services which shall be governed by Section 10.4, each party will have the right to terminate this Agreement for convenience upon thirty (30) days written notice thereof. Termination of this Agreement pursuant to this Section 10.3 shall not terminate any Software license granted hereunder, shall not rescind or impact in any way purchases of Equipment or Software already shipped or any Services already performed or whether paid for or not paid for. The license terms of Section 2 as well as any additional license terms set forth in a Supplement shall survive any termination of this Agreement and shall continue until Customer returns Software and all copies and portions thereof and provides Agilysys with an officer's written certification of compliance with the foregoing.

**10.4 Termination for Convenience by Customer for Subscription Services.** Customer will have the right to terminate any Supplement for Subscription Services for convenience at any time upon written notice to Agilysys. If Customer elects to terminate this Agreement for convenience during the Initial Term, Customer shall pay (a) all Subscription Fees and all other fees and expenses payable by Customer under this Agreement and (b) an early termination fee calculated by multiplying the monthly Subscription Fees and taxes remaining in the Initial Term by the percentage rate in the table below that corresponds to the twelve (12) month period during which such termination for convenience occurs:

First twelve months	40%
Second twelve months	35%
Third twelve months	30%
Fourth twelve months	25%
Fifth twelve months	20%

**10.5 Effect of Termination; Customer Obligations.** Upon termination of any Software license granted hereunder, Customer's rights to use Agilysys Software cease. Customer will promptly return to Agilysys the applicable Software and all copies and portions thereof, and provide Agilysys with an officer's written certification of Customer's compliance with the foregoing.

**10.6 Survival.** The rights and obligations of the parties contained in Sections 2, 3.4, 5, 6.3, 7, 8, 9, 10.4, 10.5, 10.6 and 11 will survive the termination of this Agreement or of any individual Software license granted hereunder.

## 11. GENERAL.

**11.1 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement together with all rights and obligations hereunder, without consent of the other party, to a purchaser of all, or substantially all, of the capital stock of the transferor. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their successors and permitted assigns.

**11.2 Governing Law; Disputes.** This Agreement will be governed by and construed in accordance with the laws of the State of Ohio, USA excluding that body of laws known as conflicts of law. The rights and liabilities of the parties to this Agreement shall in all respects be governed by the laws of the State of Ohio, notwithstanding any State's conflict of laws principles. Any action shall be brought in the United States District Court for the Northern District of Ohio, Eastern Division, or the Cuyahoga County Court of Common Pleas if filed in state court.

or if federal court jurisdiction is unavailable. Both parties consent to such jurisdiction and venue. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

**11.3 Nonexclusive Remedy.** Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

**11.4 Severability.** If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect.

**11.5 Waiver.** The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision.

**11.6 Notices.** All notices required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or overnight delivery services, or by certified mail, and in each instance will be deemed given upon receipt. All communications Customer will be sent to the addresses set forth above or to such other address as may be specified in accordance with this Section. All communications to Agilysys shall be sent to the attention of Tina Stehle, Sr. Vice President & General Manager, 11545 Wills Road, Alpharetta, Georgia 30009, with a copy to Agilysys Law Department (HSG), 28925 Fountain Parkway, Solon, Ohio 44139. Either party may change its address for notices under this Agreement by giving written notice to the other party by the means specified in this Section.

**11.7 Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, supplies, war, terrorism, riot, acts of God or governmental action.

**11.8 Relationship of Parties.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**11.9 Publicity.** Customer agrees that Agilysys may publish information about Customer's use of Agilysys' Products in advertisements, news releases and releases to professional and trade publications. Customer has the right to approve each such release prior to its placement, but agrees not to unreasonably withhold approval.

**11.10 Export Control.** Each party shall comply with all United States and foreign export control laws or regulations applicable to its performance under this Agreement. Customer will not export or re-export Equipment or Software in violation of the U.S. Export Administration regulations or other applicable laws and regulations. Customer will defend, indemnify, and hold Agilysys harmless from and against all fines, penalties, liabilities, damages, costs, and expenses incurred by Agilysys as a result of any violation of such laws and regulations by Customer or any of Customer's agents or employees.

**11.11 Entire Agreement.** This Agreement, including all accepted Supplements and any exhibits hereto, constitutes the complete and exclusive agreement between the parties regarding any past, current or future orders of Equipment, Software or Services, and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to such subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both parties.

**11.12 Counterparts.** This Agreement may be executed in counterparts, which taken together shall form one legal instrument.

**[End of Document]**

# Agilysys..

Agilysys NV, LLC  
11545 Wills Road Ste 100  
Alpharetta, GA 30008

## SUPPLEMENT TO UNIVERSAL AGREEMENT

By and between Santa Ysabel Resort and Casino and Agilysys NV, LLC

### Payment Schedule:

Payment due upon invoice

Total Estimate \$ 1,799.94

\*Any amounts indicated for services, travel and lodging are preliminary estimates. Charges for installation and training will reflect actual hours required and will be billed at Agilysys' standard hourly rates. Charges for travel and lodging will reflect Agilysys' actual costs. Amounts for hardware do not include shipping applicable taxes and/or duties.

### Terms and Conditions:

By signing this Supplement, you agree to purchase the items detailed in attached Quote Number: 81302-37. The undersigned acknowledges that he/she is an agent of the Customer identified above and is duly authorized to bind Customer in contract. By signing this Supplement, you agree to purchase the items listed above or detailed in the quote referenced in this Supplement. You also agree that the Software Agilysys is licensing to you and the terms of sale for other items will be pursuant to Agilysys' Universal Agreement or other negotiated terms between you and Agilysys (the "Agreement"). If your Agreement with Agilysys does not include terms of purchase for third-party hardware, software or services (collectively, "Products"), then the terms of purchase for any such Products included in this Supplement shall be governed by Agilysys' General Terms and Conditions of Sale which are found at <http://www.agilysys.com/NR/rdonlyres/305EDBA3-4CED-4B25-8A7D-882733A80937/0/TermsandConditions.pdf>. If you are purchasing Agilysys Hardware Maintenance Services, you agree that the terms and conditions for such Products shall be those set forth at <http://www.agilysys.com/NR/rdonlyres/3BF77D0C-EBFA-4300-9557-9B8BF5BCF750/0/HSGHardwareMaintenanceTerms.pdf>. Notwithstanding the foregoing, Customer agrees that the terms of any future purchases will be set forth in additional, separate Supplements which shall also be subordinate to and governed by the Agreement.

### Billing Address:

SANTA YSABEL RESORT AND CASINO  
PO BOX 800  
SANTA YSABEL, CA 92070

### Shipping Address:

SANTA YSABEL RESORT AND CASINO  
25575 HIGHWAY 79  
SANTA YSABEL, CA 92070

### Agreed and accepted:

By:

Name:

Title:

Date:

*[Signature]*  
*[Signature]*  
*[Signature]*  
7/16/10

By:

Name:

Title:

Date:

Agilysys NV, LLC

Tina Stehle

Senior Vice President and General Manager

Please make payments payable to Agilysys NV, LLC and send via the following:

Bank Name: Bank of America

### Deposit Check Mailing/Overnight Instructions:

Agilysys NV, LLC  
1858 Papyrus Circle  
Chicago, IL 60674

### Deposit Wire/ACH Instructions:

Bank of America  
Chicago, IL  
ABA#026009593  
Account Name: Agilysys Inc  
Account Number: 5800339714  
SWIFT Code: BOFAUS3N

### ACH Instructions:

Bank of America  
Chicago, IL  
ABA#071000039  
Account Name: Agilysys NV, LLC  
Account Number: 5800339714

## **EXHIBIT “E”**





October 19, 2011

To: Iipay Nation of Santa Ysabel  
From: Santa Ysabel Resort & Casino

This to acknowledge the temporary loan in the amount of \$180,000 (One Hundred Eighty Thousand Dollars) from the Iipay Nation of Santa Ysabel to the Santa Ysabel Resort & Casino. Said amount will be paid back in full at the time of the Insurance Reimbursement payment from Great American Insurance Group or the recovery of stolen funds from the Casino theft on October 17, 2011.

The amount will be wired from the Iipay Nation of Santa Ysabel's account to Santa Ysabel Resort & Casino Operating Account on October 19, 2011.

Santa Ysabel Representative

David Chelette, General Manager

10-19-11

Date

Iipay Nation Representative

Virgil Perez, Tribal Chairman

10-19-11

Date

**DECLARATION OF JOHN-PATRICK M. FRITZ, ESQ.**

I, John-Patrick M. Fritz, hereby declare as follows:

1. I am over 18 years of age. Except where otherwise stated, I have personal knowledge of the facts set forth below and, if called to testify, I could and would testify competently thereto.

2. I am duly licensed to practice law in the state of California and in the United States District Court and Bankruptcy Court for the Southern and Central Districts of California.

3. I am an associate at the law firm of Levene, Neale, Bender, Yoo & Brill L.L.P., proposed counsel to Santa Ysabel Resort and Casino, the debtor and debtor in possession in the above captioned case (the "Debtor").

4. I make this declaration in support of the Opposition to Motion to Dismiss Bankruptcy Case for Lack of Eligibility and Authority (the "Opposition") filed by the Debtor. Unless otherwise stated, all capitalized terms herein have the same meanings as in the Opposition.

5. Through my office, I ordered from CLAS Information Systems summaries of UCC Financing Statements affecting the Debtor and the actual UCC Financing Statements. Collectively attached hereto as Exhibit "F" is a summary of the UCC-I Financing affecting the Debtor that was obtained by conducting a search under the name "Santa Ysabel Resort Casino."

6. This search turned up only one recorded lien by Sysco San Diego (a food and catering vendor and creditor of the Debtor), which lien the Debtor disputes (though the amount of the debt is undisputed).

7. Knowing that the YAN had filed a UCC shortly before the petition date, and knowing that the YAN would be a contentious party, I determined that the Debtor should attach the UCC searches that reflected the YAN's recording. In my opinion, attaching the UCC search for the name "Santa Ysabel Resort Casino" seemed unnecessary because Sysco's filing already appeared on the UCC search for the name "Santa Ysabel Band of Diegueno Mission Indians."

1           8.     If the UCC search under the name "Santa Ysabel Resort Casino" had turned up  
2 more than one baseless UCC-1 filing, or a filing that was not covered by the other UCC searches,  
3 then I would have attached such UCC search to my declaration with the Debtor's first day motions  
4 filed on or about July 3, 2012.

5           9.     I declare under penalty of perjury under the laws of the United States of America  
6 that the foregoing is true and correct.

7           Executed this 20th day of August 2012, at Los Angeles, California.

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



JOHN-PATRICK M. FRITZ, ESQ.

## **EXHIBIT “F”**



Report Date: Jun 21, 2012

ASK US ABOUT UCC eZFILE<sup>®</sup>  
800.952.5696



## CLAS INFORMATION SERVICES

2020 Hurley Way, Suite 350, Sacramento, CA 95825  
Local: 916/564-7800 Fax: 916/564-7900 Toll Free: 800/952-5696

### UCC Search Report

**Type of Search :** UCCs, Federal Tax Liens, State Tax Liens, and Judgments  
**Jurisdiction/Filing Office :** State of California, Secretary of State Uniform Commercial Code Division  
**Effective Index Date :** Jun. 14, 2012  
**Subject Search Name :** SANTA YSABEL RESORT CASINO  
**Search Key Entered :** SANTAYSABELRESORTCASINO

### Results

Based on a search of the indices of the Uniform Commercial Code Division of the Secretary of State of California, there are no active liens of record other than those set out below. Liens reflected in this report were based on the searcher's individual search parameters, the search key entered, as well as the searcher's choice of the liens ultimately included or excluded herein.

**Certification can only be obtained through the office of the California Secretary of State.**

#### 1. UCC Financing Statement

**Document No. :** 20107243697150      **Lapses:** 9/2/2015  
**Filed :** 9/2/2010  
**Debtor :** SANTA YSABEL BAND OF DIEGUENO MISSION INDIANS  
25575 HWY 79  
SANTA YSABEL CA 92070  
**Debtor :** SANTA YSABEL RESORT & CASINO  
25575 HWY 79  
SANTA YSABEL CA 92070  
**Secured Party:** SYSCO SAN DIEGO, INC  
12180 KIRKHAM RD  
POWAY CA 92064

We assume no liability with respect to the identity of any party named or referred to in this report, nor with respect to the validity, legal effect or priority of any matter shown herein; nor, due to our inability to independently verify the accuracy of this data as provided by government and other sources, do we make any guaranty or representation as to its accuracy.

----- END OF REPORT -----

#### Report Parameters

The UCC Revised Article 9 Model Administrative Rules (MARS) provide state filing offices with a set of guidelines for producing a legally compliant UCC lien search report. The search tool used to create this search report was designed to satisfy the requirements under MARS while providing the searcher with increased flexibility.

Flexible search logic generates a more inclusive search report and addresses the inconsistencies in searches performed within states that did not effectively adopt the MARS guidelines. Further, these specially designed broad-based searching features aid in the location of involuntary liens such as Federal and State Tax Liens and Judgment Liens and liens that may not be located in state databases limited to the MARS guidelines for the reporting of UCCs.

Search Date: Jun 21, 2012

ASK US ABOUT UCC eZFILE™  
800.952.5696



## CLAS INFORMATION SERVICES

2020 Hurley Way, Suite 350, Sacramento, CA 95825  
Local: 916/564-7800 Fax: 916/564-7900 Toll Free: 800/952-5696

### California Similar Name Report

Subject Search Name: SANTA YSABEL RESORT CASINO

Truncated search name: SANTA YSABEL RESORT CASINO Effective Index Date: Jun 14, 2012

Contains all debtor names not included on the final results report.

All debtors are listed on the final results report.

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**A. NAME & PHONE OF CONTACT AT FILER [optional]**Ana M Sharp  
(858) 513-7000**B. SEND ACKNOWLEDGMENT TO: (Name and Address)**Sysco San Diego, Inc.  
12180 Kirkham Road  
Poway, CA 92064  
USA

DOCUMENT NUMBER: 26182210002

FILING NUMBER: 10-7243697150

FILING DATE: 09/02/2010 11:08

IMAGE GENERATED ELECTRONICALLY FOR WEB FILING  
THE ABOVE SPACE IS FOR CA FILING OFFICE USE ONLY**1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names****1a. ORGANIZATION'S NAME**

Santa Ysabel Band of Diegueno Mission Indians

**1b. INDIVIDUAL'S LAST NAME****FIRST NAME****MIDDLE NAME****SUFFIX****1c. MAILING ADDRESS**

25575 Hwy 79

**CITY**

Santa Ysabel

**STATE**

CA

**POSTAL CODE**

92070

**COUNTRY**

USA

**1d. SEE INSTRUCTIONS****ADD'L DEBTOR INFO****1e. TYPE OF ORGANIZATION**Tribal Gaming  
Enterprise**1f. JURISDICTION OF ORGANIZATION**

CA

**1g. ORGANIZATIONAL ID#, if any**☒ NONE**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names****2a. ORGANIZATION'S NAME**

Santa Ysabel Resort &amp; Casino

**2b. INDIVIDUAL'S LAST NAME****FIRST NAME****MIDDLE NAME****SUFFIX****2c. MAILING ADDRESS**

25575 Hwy 79

**CITY**

Santa Ysabel

**STATE**

CA

**POSTAL CODE**

92070

**COUNTRY**

USA

**2d. SEE INSTRUCTIONS****ADD'L DEBTOR INFO****2e. TYPE OF ORGANIZATION**

DBA

**2f. JURISDICTION OF ORGANIZATION**

CA

**2g. ORGANIZATIONAL ID#, if any**☒ NONE**3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)****3a. ORGANIZATION'S NAME**

Sysco San Diego, Inc

**3b. INDIVIDUAL'S LAST NAME****FIRST NAME****MIDDLE NAME****SUFFIX****3c. MAILING ADDRESS**

12180 Kirkham Rd

**CITY**

Poway

**STATE**

CA

**POSTAL CODE**

92064

**COUNTRY**

USA

**4. This FINANCING STATEMENT covers the following collateral:**

See Attachment(s)

**5. ALT DESIGNATION:** ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING☐ 6. This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS  
Attach Addendum [if applicable]**7. Check to REQUEST SEARCH REPORT(S) on Debtor(s)**☐ [ADDITIONAL FEE] ☐ [optional] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2**8. OPTIONAL FILER REFERENCE DATA**

acct #478263

FILING OFFICE COPY

**Applicant hereby grants SYSCO Corporation, the SYGMA Network, Inc., Freshpoint, Inc., and each of their respective subsidiaries and affiliates (collectively SYSCO) a continuing security interest in all of Applicant's presently owned or hereafter acquired (a) food and nonfood goods and inventory, including, without limitation, food products, food preparation supplies, dinnerware, flatware, drinkware, serving/buffet/banquet supplies, tabletop items, carts/racks, stands and worktables, bar supplies, cutlery, janitorial supplies, shelving supplies, interior furniture supplies, and all accessories and products, (b) instruments, (c) Chattel paper, (d) documents, (e) accounts, (f) accounts receivable, (g) general intangibles, and (h) payment intangibles and together with all proceeds and all support obligations thereof to secure payment for all purchases by Applicant from SYSCO, now and in the future.**



**DECLARATION OF HUGGY LAMAR PRICE, ESQ.**

I, Huggy Lamar Price, hereby declare as follows:

1. I am over 18 years of age. I have personal knowledge of the facts set forth herein, and, if called as a witness, could and would testify competently with respect thereto.

2. I am duly licensed to practice law in the state of California and the state of Colorado.

3. I am a member of the Iipay Nation of Santa Ysabel, a federally recognized Indian Tribe (the "Iipay Nation").

4. I am general counsel to the Iipay Nation.

5. I am a former member of the Tribal Council of the Iipay Nation, having sat on the Tribal Council for approximately two (2) years.

6. I make this declaration based on my own personal knowledge and upon the books and records of the Iipay Nation.

7. I make this declaration in support of the Opposition to Motion to Dismiss Bankruptcy Case for Lack of Eligibility and Authority (the "Opposition") filed by Santa Ysabel Resort and Casino (the "Debtor"). Unless otherwise stated all capitalized terms herein have the same meanings as ascribed to them in the Opposition.

8. Virgil Perez, the Iipay Nation's Chairman, and the Iipay Nation's legislators consulted with me, as the Iipay Nation's general counsel, regarding the decision to file the Debtor's bankruptcy case. The legislators fully supported the decision and authorized the Chairman to commence the Debtor's bankruptcy case by signing the resolution to authorize the filing.

9. It is the Iipay Nation's tradition for the Chairman to make major, high-end business decisions regarding the Debtor, such as whether to file for bankruptcy. In keeping with that tradition, the Iipay Nation's legislators, Chairman, and I determined that no resolution of the legislative branch or General Council would be needed to authorize the bankruptcy filing.

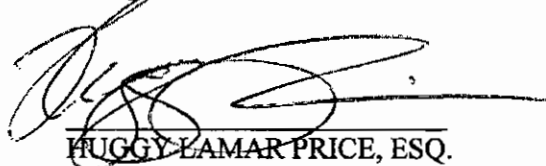
10. Although the Iipay Nation believes that it is wholly unnecessary, so as to eliminate any doubt as to proper authorization, the Iipay Nation's legislature is preparing a legislative bill to

1 ratify the authorization to file the Debtor's bankruptcy. The legislative process will take  
2 approximately 45 days for the bill to become law. I am strongly confident that the law will pass  
3 due to the legislature's and General Council's support for the Debtor's bankruptcy filing. Under  
4 the Iipay Nation's current constitution, General Council authorization is not necessary to  
5 authorize the Debtor's bankruptcy filing. The General Council resolutions cited to by the YAN  
6 were made under the repealed Articles of Association.

7 I declare under penalty of perjury under the laws of the United States of America that the  
8 foregoing is true and correct.

9 Executed this 20th day of August 2012, at Los Angeles, California.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



HUGGY LAMAR PRICE, ESQ.

In re  
Santa Ysabel Resort and Casino

Chapter 11

Debtor(s). Case No. 12-09415-PB11

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067

A true and correct copy of the foregoing document entitled (*specify*): OPPOSITION TO MOTION TO DISMISS BANKRUPTCY CASE FOR LACK OF ELIGIBILITY AND AUTHORITY will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) **August 20, 2012**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☐ Service information continued on attached page

- Ron Bender rb@lnbyb.com
- Peter L. Duncan peterd@psdslaw.com, theresam@psdslaw.com
- Mary Testerman Duvoisin mary.m.testerman@usdoj.gov, USTP.region15@usdoj.gov; shannon.m.vencill@usdoj.gov; tiffany.l.carroll@usdoj.gov
- Richard Havel rhavel@Sidley.com
- United States Trustee ustp.region15@usdoj.gov

**2. SERVED BY UNITED STATES MAIL:**

On (date) **August 20, 2012**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL**

(state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) **August 20, 2012**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**Served By Overnight Mail**

Hon. Peter W. Bowie  
U.S. Bankruptcy Court  
Jacob Weinberger U.S. Courthouse  
325 West F Street, Room 328  
San Diego, CA 92101-6998

**Served By Overnight Mail**

United States Trustee  
United States Department of Justice  
402 West Broadway, Suite 600  
San Diego, CA 92101

☐ Service information continued on attached page served via overnight mail

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

August 20, 2012

Jason Klassi

/s/ Jason Klassi

Date

Printed Name

Signature



RSN  
Santa Ysabel Resort and Casino

Securities Exchange Commission  
5670 Wilshire Boulevard, 11th Floor  
Los Angeles, CA 90036

United States Trustee  
United States Department of Justice  
402 West Broadway, Suite 600  
San Diego, CA 92101

Counsel for Yavapai-Apache Nation  
Richard W Havel  
Sidley & Austin:  
555 W 5th Street, Suite 4000  
Los Angeles, CA 90013

Counsel for Yavapai-Apache Nation  
Eric George/Ira Bibbero  
Brown George Ross LLP  
2121 Avenue of the Stars, Suite 2400  
Los Angeles, CA 90067

Counsel for International Game Technology  
Eve H. Karasik/Gregory K. Jones  
Christine M. Pajak  
Stutman, Treister & Glatt  
1901 Avenue of the Stars, 12<sup>th</sup> Floor  
Los Angeles, CA 90067

Counsel for County of San Diego  
Peter L. Duncan  
Jennifer E. Duty  
Pyle Sims Duncan & Stevenson  
401 B St Ste 1500  
San Diego, CA 92101