



SQUAXIN ISLAND TRIBE

RESOLUTION NO. 14- 84

of the

SQUAXIN ISLAND TRIBAL COUNCIL

WHEREAS, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

WHEREAS, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

WHEREAS, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

WHEREAS, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

WHEREAS, the Tribal Council has established the Little Creek Casino Resort as a key tribal enterprise that funds the governmental services provided by the Tribe; and

WHEREAS, Tribal Council has not delegated the authority to Casino management to grant contractual waivers of sovereign immunity and therefore must individually approve each waiver by binding council action;

WHEREAS, Casino staff have negotiated the terms of an agreement with Bally Gaming Inc. ("Bally") for the lease of games, gaming devices, and/or equipment on terms agreeable to the Casino, which terms include a limited waiver of sovereign immunity;


NOW THEREFORE BE IT RESOLVED, that the Squaxin Island Tribal Council authorizes the Little Creek Casino Resort to enter into the attached License and Lease Agreement (the "Agreement") with Bally.

NOW THEREFORE BE IT FURTHER RESOLVED, the Tribal Council specifically limits its waiver of sovereign immunity for the purposes of this Contract to those limited waivers as stated in the attached documents; and

NOW THEREFORE BE IT FINALLY RESOLVED, that the Tribal Council hereby authorizes Michael Starr, Casino CEO to do any and all accounts necessary to effect execution of the Contract.

CERTIFICATION

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 11 day of December, 2014, at which time a quorum was present and was passed by a vote of 6 for and 0 against, with 0 abstentions.



David Lopeman, Chairman

Attested by: 

Pete Kruger, Secretary



Arnold Cooper, Vice Chairman



LICENSE AND LEASE AGREEMENT

November 20, 2014

LITTLE CREEK CASINO
91 WEST STATE ROUTE 108
SHELTON, WASHINGTON 98584

This License and Lease Agreement ("Agreement") is made and entered into as of the date last signed below ("Effective Date") by and between Bally Gaming, Inc., a Nevada corporation, dba Bally Technologies, and its affiliates, (collectively, "Bally") and the Customer identified above ("Customer").

The parties agree as follows:

1. *Lease and Trial Options.*

1.1 The terms and conditions of this Agreement shall govern the license, lease/participation and trial of the following Bally equipment: electronic gaming machines ("EGM") and/or electronic table systems ("ETS") described on Exhibit A (EGM and ETS, collectively, "Equipment"). During the term of this Agreement, Bally leases the Equipment to Customer. The Equipment is for use at the Qualified Location only. The Equipment and all Intellectual Property, as defined in the Terms and Conditions of this Agreement, associated with the Equipment are and will at all times remain Bally's exclusive personal property, and Customer will keep the Equipment free and clear of any and all claims, liens, levies, processes, and encumbrances. In addition, Customer will be responsible for keeping the Equipment and the area around it clean and neat, clearing coin jams, replacing fuses, light bulbs, and standard coin acceptors, and for making all fills to the Equipment, including but not limited to the initial hopper loads. Customer shall immediately notify Bally of any problems with the Equipment that require maintenance or repair by Bally under this Agreement.

1.2. *Intentionally Deleted*

1.3 *Trial Option.* For Equipment subject to trial, the terms set forth in this Agreement and Exhibit A, shall apply. If Customer elects to license and lease the Equipment, or to lease the Equipment, as described in Exhibit A, then Customer will notify Bally of such election via a signed Conversion Acknowledgement in the form attached thereto.

2. *Payment Terms.*

2.1 Customer shall pay Bally the payments listed on Exhibit A beginning on the date the Equipment is installed. Accrued sums payable to Bally shall be paid by Customer by the 15th of each month following the month in which such sums accrue.

2.2 *Late Payments.* For any payment that is thirty (30) days or more past due, Bally shall have the right to charge interest, payable immediately upon demand, at the lower of (i) 1.5 percent (1.5%) per month or (ii) the highest rate permitted by law.

3. *Delivery.*

3.1 Bally shall retain title to such leased or trialed Equipment; however, the risk of loss shall pass to Customer when the Equipment is delivered to Customer. Unless otherwise set forth on Exhibit A, Customer shall bear all costs of transportation for the Equipment.

3.3 The estimated delivery date will be approximately eight (8) to twelve (12) weeks after Customer returns the signed Agreement. Customer agrees to take delivery of the Equipment within thirty (30) days after Bally completes manufacturing of the Equipment.

4. *Notices.* All notices required under this Agreement must be in writing and must be delivered or mailed to the addresses set forth herein or to such other addresses as the parties may designate in writing. Notices to Bally

shall be delivered or mailed to: Bally Gaming, Inc., 6650 El Camino Road, Las Vegas, Nevada 89118, Attn: Legal Dept. Notices to Customer shall be delivered or mailed to the address set forth above.

5. *Termination.*

5.1 Unless otherwise set forth in the Exhibit A, either party may terminate this Agreement upon thirty (30) days' written notice to the other party of its intent not to renew at the expiration of the then-current term.

5.2 Either party may terminate this Agreement immediately upon a breach by the other party of any term or condition, if such breach continues uncured for thirty (30) days following written notification from the non-breaching party. Following termination Customer shall make any leased Equipment or trial Equipment available to Bally, in proper working order, normal wear and tear excepted, for Bally's retrieval at a time mutually agreed upon by the parties.

6. *Training; Installation; Service and Preventative Maintenance.* Bally will provide to Customer, at no additional charge, reasonable and customary installation services, employee training and technical support, as specified at the time of the sale or lease of the Equipment from Bally to Customer; provided however that, Bally will provide (i) installation and training on a date mutually agreed by parties, (ii) preventative maintenance and labor, as applicable within the service territory, and (iii) all repairs and parts to keep such Equipment in good working order.

7. *Terms and Conditions.* This Agreement includes and incorporates by reference the attached General Terms and Conditions and Exhibits.

CUSTOMER:
Little Creek Casino

BALLY:
Bally Gaming, Inc.

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

LICENSE AND LEASE AGREEMENT GENERAL TERMS AND CONDITIONS

1. INTELLECTUAL PROPERTY

1.1 *Bally's Intellectual Property.*

Nothing in this Agreement shall impair the scope of Bally's rights to any Intellectual Property rights or interests in, to, or associated with, the Equipment whether the intellectual property is owned by Bally or licensed to Bally by third parties and incorporated into the Equipment. "Intellectual Property" means all intellectual property and industrial property rights and rights in confidential information of every kind and description throughout the world, including all U.S. and foreign (i) patents, patent applications, invention disclosures, designs, and all related continuations, continuations-in-part, divisionals, reissues, Inter Partes Reviews (IPRs), re-examinations, post-grant reviews, substitutions, renewals, and extensions thereof, (ii) trademarks, service marks, names, corporate names, trade names, domain names, logos, slogans, trade dress, design rights, and other similar designations of source or origin, together with the goodwill symbolized by any of the foregoing, renewal interests and rights, and common law rights, (iii) copyrights and copyrightable subject matter, (iv) rights in computer programs (whether in source code, object code, or other form), algorithms, databases, compilations and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing, (v) trade secrets and all other confidential information, ideas, know-how, inventions, proprietary processes, formulae, models, game methods, themes and methodologies, (vi) rights of publicity, privacy, and rights to personal information, (vii) moral rights and rights of attribution and integrity, (viii) telephone numbers, top level Internet domain names, Internet protocol addresses, and other alphanumeric addresses and mnemonics, (ix) social media addresses and accounts and usernames, account names and identifiers (whether textual, graphic, pictorial or otherwise), and sub-domain names and personal URL's used or acquired in connection with a third-party website; (x) all rights in the foregoing and in other similar intangible assets, and (xi) all applications and registrations for the foregoing (collectively, the "Intellectual Property"). Customer acknowledges and agrees that Bally owns all worldwide right, title and interest in and to the Intellectual Property in, and associated with, the Equipment and that Customer shall not acquire, nor shall not claim any rights in or title to the Intellectual Property. Bally shall retain its rights to control and use, and remain the sole owner of, the Intellectual Property, regardless of Customer's actual use or intended use of the Equipment.

(a) Except to the extent the Equipment incorporates the Intellectual Property, Customer shall not use the Intellectual Property for any promotion, marketing, advertising, or any other purpose without obtaining Bally's prior written approval.

(b) When Customer no longer offers the Equipment to the public, Customer shall cease displaying or using all materials, including signage, associated with the Equipment that display the Intellectual Property or otherwise incorporate the Intellectual Property into the Equipment. Customer shall return all such materials to Bally immediately upon Bally's request.

1.2 *License.* Subject to the terms and conditions of this Agreement, if applicable, Bally grants to Customer a non-exclusive license (without the right to sublicense) to use, display and play Intellectual Property directly related to the Equipment. The grant of license is limited to the approved use of the Equipment during the term of this Agreement and only for the Intellectual Property provided by Bally for the specific Equipment leased or licensed. Any copying, reproduction, reverse engineering, alteration, modification or addition to the Intellectual Property, including game theme software, is expressly prohibited without the prior written consent of Bally and will result in the termination of the license granted herein. Customer agrees to provide Bally with photographic exemplars of use of the Equipment upon Bally's written request.

2. CONFIDENTIALITY

Each party agrees that all confidential documents, work product and information (including but not limited to all computer code and related materials) received or otherwise obtained from the other party pursuant to this Agreement will be received in strict confidence and will be used only for the purposes of performing under this Agreement. Except with respect to a request with a regulatory agency, neither party will disclose any such information to any third party, without obtaining the prior written consent of the other party, and each party will disclose such information only to such of its officers, employees, and agents that have a need to know such information for the

purposes contemplated by this Agreement.

3. WARRANTY

3.1 During the term of any lease and so long as Customer is in compliance with this Agreement, Bally warrants and guarantees to Customer that the Equipment will be free from defects in material and workmanship that materially and adversely affect the performance of the Equipment. Deviations from any specifications or standards that do not materially affect the performance of the Equipment are not considered to be defects in materials or workmanship. If Bally is notified in writing by Customer and Bally's inspections and tests determine that the Equipment is indeed defective and has not been subjected to any of the conditions set forth in 3.3(a) below, Customer's sole and exclusive remedy in the event of defect is expressly limited to the adjustment, repair, or replacement of defective parts to return the Equipment to good working condition, in the sole discretion of Bally.

3.2 *Performance Warranty (applicable solely to ETS Equipment).* Customer may change game kit(s) at no charge on any leased ETS Equipment set forth in Exhibit A. Customer must submit request for game kit change to Bally in writing. (Game kit changes are limited to those that have received regulatory approval.) Shipping/handling, taxes and any applicable duties and custom charges will be invoiced for equipment related to game kit changes with payment due on receipt of invoice. Bally and Customer shall arrange a mutually-acceptable time for Bally to remove the game kit(s) and install of the new game kit(s) on the leased ETS Equipment.

3.3 *Disclaimer.*

(a) This warranty is void if the Equipment or any part thereof is not installed, operated and maintained in accordance with Bally product literature and manuals or is operated in violation of law. In addition, this warranty is void if the defective Equipment and/or part (i) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation by Customer or on behalf of Customer (other than by Bally), improper storage, or improper handling, (ii) has been repaired or altered by persons other than Bally, or (iii) has been used with any third party software or hardware which has not been previously approved in writing by Bally.

(b) Customer shall be solely responsible for properly configuring the Equipment (for example, denomination, maximum bet, maximum jackpot, jackpot progression, game speed, bill validator and dispensers, and so on), even if Bally performs these services at Customer's request, and Customer shall release, indemnify, defend, and hold Bally harmless from any claims Customer or any third party has or may have for losses of any kind arising from improper configuration regardless of who performs it.

(c) If chairs are included on Exhibit A, except for Bally's gross negligence, Bally shall not be liable for any damages suffered by Customer or any third party arising from the use or malfunction of chairs supplied but not manufactured by Bally. Customer shall release, indemnify, defend, and hold Bally harmless from and against any liability or damage from injury or loss arising out of possession or use of the chairs on Customer's Qualified Location.

(d) IN NO EVENT SHALL BALLY OR ANY OF ITS AFFILIATES, SUBSIDIARIES, REPRESENTATIVES, OR AGENTS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF USE OR REVENUE. THIS WARRANTY IS VOID IF THE EQUIPMENT OR ANY PART THEREOF IS NOT OPERATED AND MAINTAINED IN ACCORDANCE WITH BALLY PRODUCT LITERATURE AND MANUALS OR IS OPERATED IN VIOLATION OF LAW. THIS WARRANTY GRANTS SPECIFIC LEGAL RIGHTS, BUT CUSTOMER MAY HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, AND SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE EXCLUDED FROM THIS AGREEMENT, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR USE AND MERCHANTABILITY, AND THOSE ARISING UNDER USAGE OF TRADE, COURSE OF DEALING, OR COURSE OF PERFORMANCE. NO AFFIRMATION OF FACT, INCLUDING BUT NOT LIMITED TO STATEMENTS CONCERNING SUITABILITY OF USE, PERFORMANCE, PERCENTAGE OF HOLD, OR PAR VALUE OF BALLY EQUIPMENT, SHALL BE DEEMED TO BE A WARRANTY OR GUARANTEE FOR ANY PURPOSE.

4. CUSTOMER'S COVENANTS

4.1 *Insurance.* Customer will bear the risk of loss for all Equipment in the Customer's possession and shall insure and keep insured the Equipment at all times against loss by fire and other hazards, in an amount equal to the full current replacement value of the Equipment until, the termination or expiration of the applicable term and return of the Equipment to Bally. Bally 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 Bally. Upon Bally's request, Customer agrees to provide Bally a Certificate of Insurance evidencing said insurance coverage upon request from Bally.

4.2 *Taxes.* Customer shall pay all applicable federal, state and local sales, use, property, excise, withholding or other taxes imposed on or with respect to the Equipment, except taxes levied on Bally's net income. Applicable tax will be billed at the time of invoice. Customer represents that it is a federally-recognized Indian tribe, exempt from such taxes, and agrees to provide a tax certificate to Bally verifying such tax exempt status. Bally and /or Customer are eligible for exemptions from state taxes for goods and services provided to Customer in Indian country, including, but not limited to, exemptions from state and local sales tax, business and occupation tax, and others. Bally agrees to comply with all procedural requirements identified in WAC 458-12-192 and elsewhere as necessary to perfect available exemptions from state taxation as provided to Bally by Customer

4.3 *Authority.* The making, execution and performance by Customer of this Agreement have been duly authorized by all necessary actions and are not in conflict with Customer's governing documents. The individual executing this Agreement on behalf of Customer has been properly authorized to execute such document.

5. REGULATORY COMPLIANCE

5.1 *License Approvals.* This Agreement is contingent on any necessary approvals and licenses from any regulatory authorities having jurisdiction over the parties or the subject matter of this Agreement. Each party shall promptly apply to the appropriate regulatory authorities for any licenses and approvals necessary for that party to perform under this Agreement, shall diligently pursue its applications and pay all associated costs and fees, and shall otherwise cooperate with any requests, inquiries, or investigations of any regulatory authorities or law enforcement agencies in connection with Bally, its affiliates, or this Agreement. If any license or approval necessary for either party to perform under this Agreement is denied, suspended, or revoked, this Agreement shall be void effective the date of the denial, suspension, or revocation, provided, however, that if the denial, suspension, or revocation affects performance of the Agreement in part only, the parties may by mutual agreement continue to perform under this Agreement to the extent it is unaffected by the denial, suspension, or revocation.

5.2 *Compliance Program.* Customer acknowledges that Bally Technologies, Inc. ("Bally Technologies") (Bally's parent company), as a company operating under privileged licenses in a highly regulated industry, maintains the Bally Technologies Compliance Program to protect and preserve the name, reputation, integrity, and good will of Bally Technologies and its subsidiaries and affiliates (including Bally) through a thorough review and determination of the integrity and fitness, both initially and thereafter, of any person or company that performs work for those companies or with which those companies are otherwise associated, and to monitor compliance with the requirements established by gaming regulatory authorities in various jurisdictions around the world. Customer shall cooperate with Bally Technologies and its compliance committee as reasonably requested by Bally Technologies or the committee and shall provide the committee with such information as it may reasonably request.

5.3 *Default.* It shall be an event of default if Bally Technologies, Inc. or its compliance committee obtains from any source information with respect to Customer or this Agreement that would, in the opinion of Bally Technologies or the committee or both, jeopardize the gaming licenses, permits, or status of Bally Technologies or any of its subsidiaries or affiliates (including Bally) with any gaming commission, board, or similar regulatory or law enforcement authority.

5.4 *Compliance Program.* Bally acknowledges that Customer is as an enterprise operating under privileged licenses in a highly regulated industry, maintains a compliance program to protect and preserve the name, reputation, integrity, and good will of Customer and its owners, subsidiaries, and affiliates through a thorough review and determination of the integrity and fitness, both initially and thereafter, of any person or company that performs work for Customer, and to monitor compliance with the requirements established by applicable gaming regulatory authorities. Bally shall cooperate with Customer and its compliance committee as reasonably requested by Customer or the committee and shall provide the committee with such information as it may reasonably request.

5.5 *Default.* It shall be an event of default if Customer or its compliance committee obtains from any source information with respect to Bally or this Agreement that would, in the opinion of Customer or the committee or

both, jeopardize the gaming licenses, permits, or status of Customer or any of its owners, subsidiaries, or affiliates with any gaming commission, board, or similar regulatory or law enforcement authority.

6. GENERAL PROVISIONS

6.1 *Compliance with Laws.* Each party shall comply with all applicable federal, state, county, and municipal laws, ordinances, rules, regulations, and orders pertaining to its rights and obligations under this Agreement at its own cost and expense. Both parties shall promptly take all measures necessary to remedy any violations of any such law, ordinance, rule, regulation, or order.

6.2 *Remedies, Costs, and Attorneys' Fees.* Any violation of this Agreement will result in irreparable injury that may not be redressable by damages. In addition to any legal remedies, the non-defaulting party shall be entitled to specific performance and any other equitable relief. If either party institutes any legal or equitable action or proceeding to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover, in addition to any other damages or compensation received, that party's litigation costs, including reasonable attorneys' fees, expenses, and costs of any appeals. The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by any party shall not preclude or waive the right or use of any or all other remedies.

6.3 *Further Action.* Each party, at the request of the other party, shall execute all documents and take all other actions necessary to carry out the provisions and purposes of this Agreement.

6.4 *Entire Agreement.* This Agreement contains the entire agreement between the parties and supersedes all prior agreements, understandings and negotiations, whether oral or written, concerning the same subject matter. In the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any purchase order issued by Customer, the terms and conditions of this Agreement shall control.

6.5 *Amendment, Modification, Rescission, and Assignment.* This Agreement may not be amended, modified, rescinded, or assigned without the prior written consent of both parties.

6.6 *Dispute Resolution.*

(a) *Authority.* Customer represents that it is a tribal enterprise, instrumentality or otherwise duly formed under the laws and authority of the Squaxin Island Tribe ("Tribe") and that it is duly authorized to enter into this Agreement.

(b) *Limited Waiver of Sovereign Immunity.* Customer hereby grants to Bally a limited waiver of sovereign immunity and consents to the jurisdiction of any federal or tribal court of competent jurisdiction for the sole purpose of compelling or permitting arbitration or enforcing an arbitration award as set forth herein. In no instance shall any enforcement of any kind be allowed against any Tribal assets except Net revenues after debt service of the Tribal gaming operations. In no instance shall Customer's cumulative liability for all claims arising under this Agreement exceed the amount of 6 months' lease payments for the Equipment. This limited waiver is applicable only to Bally and does not apply to actions by third parties or any disputes outside of this Agreement. Notwithstanding any provision to the contrary, this Agreement contains no waiver of sovereign immunity, express or implied, except as specifically set forth in this paragraph 2.

(c) *Submission of Disputes to Binding Arbitration.* The parties agree that any and all controversies, disputes or claims of any nature arising directly or indirectly out of or in connection with this Agreement (including without limitation claims relating to the validity, performance, breach, and/or termination of this Agreement) shall be submitted to binding arbitration for final resolution. The arbitration shall follow the Streamlined Rules of JAMS Endispute or other mutually agreed-upon procedures and shall be conducted in a mutually agreeable location.

(d) *Enforcement/Compelling Arbitration.* The parties agree that enforcement of any arbitration award, as well as any action to permit or compel arbitration, may be brought in federal court. If the federal courts decline jurisdiction, then such action may be brought in Tribal Court. Customer waives any requirement concerning the exhaustion of Tribal Court remedies.

(e) *Choice of Law.* The parties choose and adopt Washington State law as governing law of this Agreement, including applicable provisions of the Washington State Uniform Commercial Code. With respect to

any action to review or to enforce any arbitration award, the parties agree that the standards and provisions of the Federal Arbitration Act shall apply.

(f) *Period of Limitations.* The Parties agree that no arbitration or other legal action arising out of or related to this Agreement may be commenced more than two (2) year's after the cause of said action accrues.

(g) *Service of Process.* Service of process may be made by any means authorized by the laws or rules of the Federal courts. Customer acknowledges that any principal officer of the Tribe is authorized to receive service of process, and that the address of the Tribe set forth in this Agreement is the authorized address for mailing when service of process is by mail.

(h) *Access.* Customer agrees that continuing access to the Equipment is granted to Bally and its agents, employees, and representatives, at all times, to the extent necessary to perform under this Agreement and to enforce all remedies under this Agreement, including removal of the Equipment.

(i) *No Management Contract.* The parties agree and represent that this Agreement in no way provides or purports to provide to Bally any management authority or controls over the Tribal gaming operations that would require review and approval of this Agreement by the National Indian Gaming Commission ("NIGC"). To the extent the NIGC determines that this Agreement does constitute a Management Contract, the parties agree to cooperate in revising and modifying this Agreement to the extent necessary so that NIGC approval pursuant to 25 U.S.C. Section 2701 et seq. is no longer required. If Bally so requests, the parties agree to jointly submit this Agreement in a timely fashion to the NIGC so that the NIGC may conduct its review and determine whether or not the Agreement does, in fact, constitute a Management Contract.

(j) *No Proprietary Interest.* The parties agree that this Agreement is not intended to convey or provide in any way a proprietary interest in the Tribal gaming operations.

(k) *Compliance with Tribal Law.* Customer represents that acceptance of the Agreement and the Agreement's terms and conditions complies with the Tribal laws, rules, and ordinances and any regulations promulgated thereunder ("Tribal Law"); that Bally's obligations are solely as set forth in the Agreement; and that Tribal Law places no other obligations upon Bally by operation of law, inclusion by reference or otherwise as of the Effective Date.

6.7 *Severability.* If any provision of this Agreement is unenforceable for any reason, it shall be stricken from this Agreement but shall not affect the intention of the parties or any other provision of this Agreement.

6.8 *Relationship of the Parties.* Nothing in this Agreement shall be construed so as to create any relationship of joint venture, partnership, employer/employee, agency, landlord/tenant or any similar relationship between the parties.

6.9 *Binding Effect.* This Agreement shall bind and inure to the benefit of each of the parties and their respective heirs, successors, administrators, executors, and assigns.

6.10 *No Third Party Beneficiaries.* This Agreement is made solely and specifically for the benefit of the parties hereto and their permitted successors and assigns. No other person shall have any rights, interests, claims, or benefits hereunder.

6.11 *Force Majeure.* Other than financial obligations, neither party shall be liable to the other for any delay or failure to perform any obligations set forth in this Agreement due to a force majeure event beyond its reasonable control. Performance obligations shall be extended for a period of time equivalent to the time lost because of such delay.

6.12 *Counterparts.* This Agreement may be executed in any number of counterparts with the same effect as if the parties hereto had signed the same document. Facsimile or electronic counterparts of this Agreement shall suffice as originals for all purposes.

6.13 *Captions, Construction, Drafting Ambiguities.* The captions in this Agreement are for convenience only and shall not be used in interpreting it. Each party has been represented (or has had the opportunity to be represented) by independent counsel of its own choosing. Any rule of construction that a document is to be

construed against the drafting party shall not apply.

6.14 *Limitation of Liability.*

(a) Save for Bally's gross negligence or willful misconduct, in no event shall Bally's liability for any claim related to or arising out of Equipment leased under this Agreement or the operation, design, or performance of such leased Equipment exceed an amount equal to six month lease payments actually paid by Customer to Bally for such Equipment.

(b) IN NO EVENT SHALL BALLY OR ANY OF ITS AFFILIATES, SUBSIDIARIES, REPRESENTATIVES, OR AGENTS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF USE OR REVENUE.

6.15 *Applicable Only to Trade-ins.* Trade-ins are EGM and ETS Equipment owned by the Customer that Bally has agreed to purchase from Customer in exchange for a credit to be applied towards the prices due from Customer to Bally for the purchase of Equipment. Any trade-in credit Bally offers to Customer for trade-in Equipment (i) will, if applicable, be deducted from the total purchase price before any discounts are applied, and (ii) will be valid only if Customer ships the trade-in Equipment to Bally or, at Bally's discretion, makes the trade-in Equipment available to Bally personnel at Customer's facility within thirty (30) days of receipt of the purchased Equipment or such later date as Bally and Customer shall mutually agree upon.

6.16 *Applicable Only to Cashless Capability.* Each gaming machine obtained hereunder with cashless capability (each, a "*Licensed Cashless Gaming Machine*") is provided under a limited license to one or more of the following U.S. Patent Nos.: 5,290,033; 5,265,874; 6,048,269; 5,429,361; 5,470,079; 6,729,957; 6,729,958; and 6,736,725. Any use of a Licensed Cashless Gaming Machine constitutes the acknowledgement of and agreement to the following "Limited License":

(a) Licensed Cashless Gaming Machine License Rights: Licensed Cashless Gaming Machines are licensed for use solely in connection with a cashless gaming system that is separately licensed under these patents (each, a "*Licensed Cashless Gaming System*"). The use of a Licensed Cashless Gaming Machine with an unlicensed gaming system that has cashless capability is an unlicensed use.

(b) Other License Limitations: Each Limited License is expressly limited to the original Licensed Cashless Gaming Machine (i.e., one serial number per license). A license may not be transferred from one gaming machine to another. Any unauthorized transfer voids this license.

6.17 *Agreement Approval Process.* This Agreement is contingent on all required approvals pursuant to Bally's internal controls and processes and shall not be valid nor enforceable until fully executed by both parties.

**LICENSE AND LEASE AGREEMENT
EXHIBIT A**

**Little Creek Casino
91 West State Route 108
Shelton, Washington 98584**

QTY DESCRIPTION

<u>Equipment</u>	<u>Lease Payment</u>
3 Alpha Wave	\$75.00
1 Sign Package	
3 Alpha Wave	\$70.00

Includes Accessories, Media and Progressive Equipment as applicable

Lease Term: The initial term of the lease for the Equipment shall be one hundred eighty days, commencing upon installation of the Equipment (“Initial Term”). At the conclusion of the Initial Term, the lease shall continue on a month-to-month basis with each party having the right to terminate the lease after the expiration of the Initial Term by providing thirty days’ written notice to the other party.

Delivery: FOB Destination