QuickLinks -- Click here to rapidly navigate through this document

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2001

OR

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number 0-24206

Penn National Gaming, Inc.

(Exact name of registrant as specified in its charter)

Pennsylvania (State or other jurisdiction of Incorporation or Organization)	**23-2234473** (I.R.S. Employer Identification No.)
Wyomissing Professional Center **825 Berkshire Blvd., Suite 200** **Wyomissing, Pennsylvania** (Address of principal executive offices)	**19610** (Zip Code)

Registrant's telephone number, including area code: **(610) 373-2400**

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	**Name of each exchange on which registered**
None	None

Securities registered pursuant to Section 12(g) of the Act:

Common Stock, par value $.01 per share
(Title of Class)

Indicate by check mark whether the registrant (1) has filed all reports to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. YES ☒. No o.

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. o

The aggregate market value of the voting stock held by non-affiliates of the registrant is approximately $526,252,961. Such aggregate market value was computed by reference to the closing price of the Common Stock as reported on the Nasdaq National Market on March 19, 2002. For purposes of making this calculation only, the registrant has defined affiliates as including all directors, executive officers and beneficial owners of more than ten percent of the Common Stock of the Company.

The number of shares of the registrant's Common Stock outstanding as of March 19, 2002 was 19,309,050.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive proxy statement for its 2002 annual meeting of shareholders are incorporated by reference into Part III.

TABLE OF CONTENTS

This document includes "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, regarding, among other things, our business strategy, our prospects and our financial position. These statements can be identified by the use of forward-looking terminology such as "believes," "estimates," "expects," "intends," "may," "will," "should" or "anticipates" or the negative or other variation of these or similar words, or by discussions of strategy or risks and uncertainties. Specifically, forward-looking statements may include, among others, statements concerning:

- our expectations of future results of operations or financial condition;
- our expectations for our properties and the facility that we manage in Canada;
- the timing, cost and expected impact on our market share and results of operations of our planned capital expenditures;
- the timing of completion of our acquisition of Bullwhackers casino;
- the impact of our regional diversification;

- our expectations with regard to further acquisitions and the integration of any companies we may acquire;
- the outcome and financial impact of the litigation in which we are involved;
- the actions of regulatory authorities with regard to our business and the impact of any such actions;
- the expected effect of regulatory changes that we are pursuing; and
- expectations of the continued availability of capital resources.

Although we believe that the expectations reflected in such forward-looking statements are reasonable, they are inherently subject to risks, uncertainties and assumptions about us and our subsidiaries and, accordingly, we cannot assure you that such expectations will prove to be correct. Important factors that could cause actual results to differ materially from the forward-looking statements include, without limitation, risks related to the following:

- capital projects at our gaming and pari-mutuel facilities;
- the activities of our competitors;
- the existence of attractive acquisition candidates;
- our ability to maintain regulatory approvals for our existing businesses and to receive regulatory approvals for our new businesses;
- our dependence on key personnel;
- the maintenance of agreements with our horsemen and pari-mutuel clerks;
- the risk factors and other risks and uncertainties described in this document and from time to time in our filings with the Securities and Exchange Commission; and

- other risks and uncertainties that have not been identified at this time.

All subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements included in this document. We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law. In light of these risks, uncertainties and assumptions, the forward-looking events discussed in this document may not occur.

PART I

ITEM 1. BUSINESS

Overview

We are a leading diversified, multi-jurisdictional owner and operator of gaming properties, as well as horse racetracks and associated off-track wagering facilities, which we refer to in this document as our pari-mutuel operations. We own or operate five gaming properties located in West Virginia, Mississippi, Louisiana and Ontario, Canada that are focused primarily on serving customers within driving distance of our properties. We also own two racetracks and eleven off-track wagering facilities in Pennsylvania. We believe our portfolio of assets provides us with diversified cash flow. We intend to pursue the expansion of our gaming operations through both the implementation of a disciplined capital expenditure program at our existing properties and the continued pursuit of strategic acquisitions of gaming properties in attractive regional markets.

In 1997, we began our transition from a pari-mutuel company to a diversified gaming company with the introduction of video lottery terminals at our Charles Town Entertainment Complex. In 1999, we expanded our offerings at Charles Town with the introduction of reel-spinning, coin-in/coin-out machines. We continued our transition through a series of strategic acquisitions in four different regional markets. In August 2000, we acquired Casino Magic Bay St. Louis in Bay St. Louis, Mississippi and Boomtown Biloxi in Biloxi, Mississippi for an aggregate purchase price of approximately $200 million and, in April 2001, we acquired Casino Rouge in Baton Rouge, Louisiana and the management contract for Casino Rama in Orillia, Ontario, Canada for approximately $180 million. In addition, we have signed an agreement to acquire the operations of Bullwhackers Casino, the adjoining Bullpen Sports Casino and Silver Hawk Saloon and Casino in Black Hawk, Colorado. We are also in the process of implementing significant capital improvement plans at Charles Town and Bay St. Louis. These projects include the construction of additional floor space and a parking facility at Charles Town and the development of an additional hotel in Bay St. Louis. We believe these projects will broaden the customer appeal of these properties.

The following table summarizes certain features of our owned or leased properties and our managed facility as of March 15, 2002:

Property	Location	Type of Facility	Gaming Square Footage	Gaming Machines	Table Games
Owned or Leased:					
Charles Town Entertainment Complex	Charles Town, WV	Land-based gaming/ Thoroughbred racing	50,000	2,000	—
Casino Magic Bay St. Louis	Bay St. Louis, MS	Dockside gaming	39,500	1,138	36
Boomtown Biloxi	Biloxi, MS	Dockside gaming	33,600	1,171	22
Casino Rouge	Baton Rouge, LA	Dockside gaming	28,000	1,029	38
Penn National Race Course(1)	Harrisburg, PA	Thoroughbred racing	—	—	—
Pocono Downs(1)	Wilkes-Barre, PA	Harness racing	—	—	—
Operated:					
Casino Rama	Orillia, Ontario	Land-based gaming	75,000	2,172	122
Totals			226,100	7,510	218

(1) In addition to our racetracks, Penn National Race Course and Pocono Downs operate six and five off-track wagering facilities, respectively, located throughout Pennsylvania.

Charles Town Entertainment Complex. The Charles Town Entertainment Complex in Charles Town, West Virginia features 2,000 gaming machines, a thoroughbred racetrack, simulcast wagering, entertainment and dining. The facility is located within driving distance of Baltimore, Maryland and Washington, D.C. and is a leading gaming property serving the area. There is a total population of approximately 3.1 million and 10.0 million persons within a 50 and 100-mile radius, respectively, of the

property. We have experienced strong growth at the facility and have increased the number of gaming machines from 400 in September 1997 to their current levels. A change in law in March 2001 increased the maximum per pull wagering limit on the machines from $2 to $5. We have undertaken a number of initiatives to drive growth at this property. In November 2000, we expanded the gaming area to over 50,000 square feet and opened a 150-seat restaurant and bar. We also have begun construction of a 1,500-space structured parking facility that is expected to open in the second quarter of 2002 and we are expanding the gaming floor space to accommodate additional gaming machines and patrons. The first phase of our expansion will add 41,000 square feet of space and will enable us to install 500 additional gaming machines. We expect to complete this phase of the expansion in July 2002. On February 28, 2002, the West Virginia Lottery Commission approved our request to add up to 1,500 additional gaming machines at Charles Town. We expect to install 500 machines in 2002 and an additional 1,000 machines in 2003, for a total of 3,500 machines.

Casino Magic Bay St. Louis. Casino Magic Bay St. Louis offers approximately 39,500 square feet of gaming space, with approximately 1,138 slot machines and 36 table games. The facility is located in the Gulf Coast gaming market and is within driving distance of New Orleans, Louisiana, Mobile, Alabama and other cities in the Southeast. The property includes a 201-room hotel with banquet and meeting space, 1,800-seat arena, 18-hole Arnold Palmer-designed championship golf course, steak and seafood restaurant, a buffet-style restaurant and a live entertainment lounge. We are constructing a 300-room hotel with conference facilities, which we expect to open in the late second quarter of 2002. The hotel, which is attached to the casino, will be comprised of 236 deluxe rooms, 46 junior suites and 9 one-bedroom suites with attached parlors. We believe the new hotel will enable us to enhance our status as a regional destination property.

Boomtown Biloxi. Boomtown Biloxi, also located in the Gulf Coast gaming market, offers approximately 33,600 square feet of gaming space, with 1,171 slot machines and 22 table games, as well as other gaming amenities including a full service buffet/menu service restaurant, 120-seat deli-style restaurant, full-service bakery, western dance hall/cabaret and 20,000-square foot family entertainment center. We believe that the property offers a relaxed and friendly environment and has a broad and loyal customer base. There is an adult population of approximately 665,000 and 2.2 million persons within a 50 and 100-mile radius, respectively, of the Gulf Coast market.

Casino Rouge. Casino Rouge is one of two dockside riverboat gaming facilities operating in Baton Rouge, Louisiana. The property features a four-story, 47,000-square foot riverboat casino, replicating a nineteenth century Mississippi River paddlewheel steamboat, and a two-story, 58,000-square foot dockside embarkation building. The

riverboat features approximately 28,000 square feet of gaming space, 1,029 gaming machines and 38 table games and has a capacity of 1,800 customers. The dockside embarkation facility offers a variety of amenities, including a steakhouse, a 268-seat buffet, food and bar service, lounge areas, meeting and planning space and a gift shop. There is an adult population of approximately 650,000 and 2.3 million persons within a 50 and 100-mile radius, respectively, of the Baton Rouge market.

Casino Rama. We operate Casino Rama, a full service gaming and entertainment facility, on behalf of the Ontario Lottery and Gaming Corporation, an agency of the Province of Ontario. Casino Rama, located on the lands of the Mnjikaning First Nation, is approximately 90 miles north of Toronto, Canada, and has approximately 75,000 square feet of gaming space, 2,172 gaming machines and 122 table games. A 5,000-seat entertainment facility opened in July 2001 and a 300-room hotel currently is under construction at the property and is expected to open in the second quarter of 2002. We have not and are not required to commit any of our capital to these projects. Under our operating agreement, which expires in 2011, we are entitled to a base fee equal to two percent of gross revenue of the casino and an incentive fee equal to five percent on the casino's net operating profit.

Penn National Race Course, Pocono Downs and Other Pari-Mutuel Assets. In addition to our gaming facilities, we own and operate Penn National Race Course, located outside of Harrisburg, one

of two thoroughbred racetracks in Pennsylvania, and Pocono Downs, located outside of Wilkes-Barre, one of two harness racetracks in Pennsylvania. There is a total population of approximately 2.2 million persons within a 50-mile radius of Penn National Race Course. There is a total population of approximately 1.5 million persons within a 50-mile radius of Pocono Downs. In addition to our racetracks, we operate eleven off-track wagering facilities, or OTWs, in Pennsylvania and hold a 50% interest in Pennwood Racing, Inc., a joint venture that owns and operates Freehold Raceway in New Jersey.

In August 2001, we entered into a definitive agreement to acquire the operations of Bullwhackers Casino in Black Hawk, Colorado for $6.5 million cash. The Bullwhackers properties include 20,700 square feet of gaming space, 1,002 slot machines, 16 table games and a 475-car parking area. The properties are located on leased land as well as 3.25 acres of land included in the acquisition, much of which is utilized for parking. We expect to close the acquisition in the second quarter of 2002.

We are the successor to several businesses that have operated the Penn National Race Course since 1972. We were incorporated in Pennsylvania in 1982 as PNRC Corp. and adopted our present name in 1994. Our principal executive offices are located in the Wyomissing Professional Center, 825 Berkshire Boulevard, Suite 200, Wyomissing, Pennsylvania 19610; our telephone number is (610) 373-2400.

Recent Developments

Equity Offering

On February 20, 2002, we completed a public offering of 4,600,000 shares of our common stock at a public offering price of $30.50 per share. Of the common shares sold in the offering, 3,350,000 shares were sold by us and 1,250,000 shares were sold by The Carlino Family Trust, a related party. We have used the net proceeds from the offering, totaling approximately $96.1 million after deducting underwriting discounts and related expenses, to repay term loan indebtedness under the existing senior secured credit facility. We did not receive any proceeds from the offering by The Carlino Family Trust.

$8^{7}/_{8}$% Senior Subordinated Notes due 2010

On February 28, 2002, we completed a public offering of $175.0 million of our $8^{7}/_{8}$% senior subordinated notes due 2010. Interest on the $8^{7}/_{8}$% notes is payable on March 15 and September 15 of each year, beginning September 15, 2002. The $8^{7}/_{8}$% notes mature on March 15, 2010. As of February 28, 2002, all of the principal amount of the $8^{7}/_{8}$% notes are outstanding. We have used the net proceeds from this offering, totaling approximately $170.5 million after deducting underwriting discounts and related expenses to repay term loan indebtedness under the existing senior secured credit facility.

We may redeem all or part of the $8^{7}/_{8}$% notes on or after March 15, 2006 at certain specified redemption prices. Prior to March 15, 2005, we may redeem up to 35% of the $8^{7}/_{8}$% notes from proceeds of certain sales of our equity securities. The $8^{7}/_{8}$% notes also are subject to redemption requirements imposed by state and local gaming laws and regulations.

The $8^{7}/_{8}$% notes are general unsecured obligations and are guaranteed on a senior subordinated basis by certain of our current and future wholly-owned domestic subsidiaries. The $8^{7}/_{8}$% notes rank equally with our existing and any future senior subordinated debt, including our existing $11^{1}/_{8}$% senior subordinated notes, and junior to our senior debt, including debt under our senior credit facility. In addition, the $8^{7}/_{8}$% notes will be effectively junior to any indebtedness of our non-U.S. or unrestricted subsidiaries, none of which have guaranteed the $8^{7}/_{8}$% notes.

Showboat Litigation Settlement

On February 13, 2002, Showboat Development Company filed a lawsuit against us in the United States District Court for the Eastern District of Pennsylvania. The substance of this lawsuit is substantially similar to Showboat's previous claim filed in the United States District Court of Nevada, which was dismissed for lack of personal jurisdiction on January 25, 2002. That suit, filed in July 2001, alleged, among other claims, that the operation of our Charles Town facility constitutes the operation of a casino, thereby triggering an option Showboat holds to manage a casino at the facility. On March 28, 2002, Penn National and Showboat agreed to settle all litigation related to this matter. Under the settlement, we agreed to make a one-time payment of $1.0 million to Showboat, which was recognized in general and administrative expenses in our operating results for the fourth quarter of 2001.

The Charles Town Entertainment Complex

The Charles Town Entertainment Complex in Charles Town, West Virginia features 2,000 gaming machines, a thoroughbred racetrack, simulcast wagering, entertainment and dining. The facility is approximately a 60-minute drive from Baltimore and a 70-minute drive from Washington, D.C. and is a leading gaming property serving the area. There is a total population of approximately 3.1 million and 10.0 million persons within a 50 and 100-mile radius, respectively, of the property. We have experienced strong growth at the facility in recent years and have increased the number of gaming machines from 400 in September 1997 to their current levels. On February 28, 2002, the West Virginia Lottery Commission approved our request to add up to 1,500 additional gaming machines at Charles Town. A change in law in April 2001 increased the maximum per pull wagering limit on the machines from $2 to $5. We have undertaken a number of initiatives to drive growth at this property. In November 2000, we expanded the gaming area to over 50,000 square feet and opened a 150-seat restaurant and bar. We also have begun construction of a 1,500-space structured parking facility that is expected to open in the second quarter of 2002 and we are expanding the gaming floor space to accommodate additional gaming machines and patrons. The first phase of our gaming floor

expansion, which we expect to complete in July 2002, will add 41,000 square feet of space and will enable us to install 500 additional gaming machines. We expect to install an additional 1,000 machines in 2003, for a total of 3,500 machines.

Of the 2,000 machines at December 31, 2001, approximately 1,500 machines are coin-out, spinning-reel and video gaming machines. The remaining gaming machines are dollar bill-fed video gaming machines that replicate traditional spinning reel gaming machines and video card games, such as blackjack and poker. We intend to convert some or all of the video gaming machines to coin-out, spinning-reel machines and expect to add 1,500 gaming machines over the next two years.

Our marketing efforts at the Charles Town Entertainment Complex include print and radio advertising and are focused on the Washington, D.C., Baltimore, Maryland, Northern Virginia, Eastern West Virginia and Southern Pennsylvania markets. In 1999, we installed a computerized player tracking system called Player's Choice[SM] at the Charles Town Entertainment Complex. This system has helped to further refine our marketing efforts and our database now consists of approximately 188,000 players as of March 13, 2002. Our marketing efforts also include a bus program and cash and merchandise give-aways.

Casino Magic Bay St. Louis

Casino Magic Bay St. Louis and Boomtown Biloxi (described below) operate in the established Mississippi Gulf Coast Gaming market. Gross casino gaming revenues on the Mississippi Gulf Coast totaled approximately $1,151 million and $1,110 million in 2001 and 2000, respectively. The Mississippi Gulf Coast has a long tradition as a vacation destination and it draws an estimated two million visitors annually, primarily from Louisiana, Mississippi, Alabama, Florida and Georgia. Approximately

0.6 million and 2.2 million adult persons live within a 50-mile and 100-mile radius, respectively, of the Gulf Coast and average household income in these areas is more than 80% of the U.S. average. The Gulf Coast area also boasts a local population of over 200,000 adult persons.

Casino Magic Bay St. Louis commenced operation in September 1992 as the first dockside casino in Mississippi to operate on a barge rather than a traditional riverboat. The casino is located on a 17-acre marina with the adjoining land-based facilities situated on 591 acres. Casino Magic Bay St. Louis offers approximately 39,500 square feet of gaming space, with approximately 1,138 slot machines and 36 table games. The three story land-based building houses a steak and seafood restaurant, buffet-style restaurant, café, gift shop and live entertainment lounge. The property has a 201-room hotel that includes 24 suites, banquet and meeting space and an outdoor pool. The Casino Magic Bay St. Louis complex also includes an 1,800-seat arena for concerts and sporting events, a 100-space recreational vehicle park, a child entertainment center, and the Bridges Golf Resort, an 18-hole Arnold Palmer-designed championship golf course that includes a clubhouse, pro shop, and a casual dining restaurant.

We have begun a number of focused enhancements to the Casino Magic Bay St. Louis property. We began construction in April 2001 of a 300-room hotel with conference facilities, which we expect to open in the late second quarter of 2002. The hotel, which is attached to the casino, will be comprised of 236 deluxe rooms, 46 junior suites and 9 one-bedroom suites with attached parlors. We believe that the new hotel will enhance mid-week business at the facility and will geographically extend the casino's target market. We also have begun construction of three new restaurant venues, renovations to the existing buffet restaurant and adding certain amenities to the gaming floor. We believe that with these enhancements and the existing golf course, Casino Magic Bay St. Louis, is evolving into a complete overnight destination resort with the broadest offering of amenities on the Gulf Coast.

Casino Magic Bay St. Louis is located 1.5 miles north of U.S. Highway 90, approximately nine miles south of Interstate 10, the main thoroughfare connecting New Orleans, Louisiana and Mobile, Alabama.

Boomtown Biloxi

Boomtown Biloxi, also located in the Gulf Coast gaming market, offers approximately 33,600 square feet of gaming space, with 1,171 slot machines and 22 table games, as well as other gaming amenities including a full service buffet/menu service restaurant, 120-seat deli-style restaurant, full-service bakery, western dance hall/cabaret and 20,000-square foot family entertainment center. Boomtown Biloxi commenced operations in July 1994 and occupies nine acres on Biloxi, Mississippi's historic Back Bay. The dockside property consists of a land-based facility which houses all non-gaming operating space and an approximately 33,600 square foot casino constructed on a 400 by 100-foot barge permanently moored to the land-based building. There is approximately 14,000 square feet on the barge that remains available for development. We believe that the property offers a relaxed and friendly environment and has a broad and loyal customer base.

Boomtown Biloxi offers gaming and entertainment amenities to primarily middle income, value-oriented customers. The casino has an "old west" theme with western memorabilia in its interior decor, country/western music and employees dressed in western attire. We believe that the property offers a relaxed and friendly environment and has a broad and loyal customer base. We intend to continue to focus on this target market by providing moderately priced, high value amenities and by utilizing a broad array of marketing programs, including charter flights and bus programs, among others.

Boomtown Biloxi is located one-half mile from Interstate 110, the main highway connecting Interstate 10 and the Gulf of Mexico. Interstate 10 is the main thoroughfare connecting New Orleans, Louisiana and Mobile, Alabama. According to the Mississippi Department of Transportation, over 12 million vehicles travel past the Boomtown Biloxi site on Interstate 110 each year. The site is easily accessible by car when approaching from the north due to its immediate proximity to the Interstate 110 spur from Interstate 10, which provides the bulk of traffic to the Gulf Coast region. Boomtown Biloxi is

constructed in the Back Bay and is one of the first casinos visible to auto traffic traveling south on Interstate 110.

We have an exclusive license to use the Boomtown Biloxi name, logo and internet world wide web address. The term of the license is contingent upon certain events, but in no event will it be for less than two years from August 2000. If our license to use the Boomtown Biloxi name expires, we would have to identify an alternative name for this casino.

Casino Rouge

Casino Rouge is one of two dockside riverboat gaming facilities operating in Baton Rouge, Louisiana. The property opened in 1994 and features a four-story, 47,000-square foot riverboat casino, replicating a nineteenth century Mississippi River paddlewheel steamboat, and a two-story, 58,000-square foot dockside embarkation building. The riverboat features approximately 28,000 square feet of gaming space, 1,029 gaming machines and 38 table games and has a capacity of 1,800 customers. The dockside embarkation facility offers a variety of amenities, including a steakhouse, a 268-seat "International Marketplace Buffet," an array of food, bar service and lounge areas, meeting and planning space and a gift shop. All of the facilities are open seven days a week, 24 hours a day. For fiscal year 2001, Casino Rouge's share of the Baton Rouge gaming market was approximately 55% of casino revenues, as reported by the Louisiana Gaming Control Board.

The 23-acre site is located on the east bank of the Mississippi River in the East Baton Rouge Downtown Development District less than one-quarter mile from the state capital complex. The site is within approximately one mile of both Interstate 10 and Interstate 110, two major highways in the area. In addition, the site has convenient parking for approximately 1,650 cars adjacent to the embarkation facility. There is an adult population of approximately 650,000 and 2.3 million persons within a 50 and 100-mile radius, respectively, of the Baton Rouge market

Casino Rama

CHC Casinos Canada Limited, our wholly-owned subsidiary, operates Casino Rama, a full service gaming and entertainment facility, on behalf of the Ontario Lottery and Gaming Corporation, an agency of the Province of Ontario. Casino Rama, located on the lands of the Mnjikaning First Nation, is approximately 90 miles north of Toronto, Canada, and has approximately 75,000 square feet of gaming space, 2,172 gaming machines and 122 table games. A 5,000-seat entertainment facility opened in July 2001 and a 300-room hotel currently is under construction at the property and is expected to open in the second quarter of 2002. The majority of the capital necessary for this expansion has been and will be financed by an affiliate of the Mnjikaning First Nation to be repaid out of the revenue of Casino Rama pursuant to the terms of the Development and Operating Agreement. We have not and are not required to commit any of our capital to these projects.

The Development and Operating Agreement under which CHC Casinos operates the facility sets out the duties, rights and obligations of CHC Casinos. As the operator, CHC Casinos is entitled to a base fee equal to two percent of gross revenues of the casino and an incentive fee equal to five percent on the casino's net operating margin. The agreement terminates on July 31, 2011, unless otherwise terminated earlier in accordance with the termination provisions of the Development and Operating Agreement. The Ontario Lottery and Gaming Corporation has the option to extend the term of the Development and Operating Agreement and CHC Casinos' appointment as operator for two successive periods of five years commencing on August 1, 2011.

Racing and Pari-Mutuel Operations

Our racing and pari-mutuel revenues are derived from:

- wagering on our live races at our racetracks, at our OTWs, at other Pennsylvania racetracks and their OTWs and through telephone account wagering, as well as wagering at our racetracks on certain stakes races run at out-of-state racetracks;
- wagering on full-card import simulcasts at our racetracks and OTWs and through telephone account wagering; and
- fees from wagering on export simulcasting our races at out-of-state locations.

We also derive revenues from admissions, program sales, food and beverage sales and concessions and certain other ancillary activities.

Pari-mutuel wagering on thoroughbred or harness racing is pooled wagering in which a pari-mutuel wagering system totals the amounts wagered and adjusts the payouts to reflect the relative amounts bet on different horses and various possible outcomes. The pooled wagers are paid out to bettors as winnings in accordance with the payoffs determined by the pari-mutuel wagering system, paid to the applicable regulatory or taxing authorities and distributed to the track's horsemen in the form of "purses" which encourage owners and trainers to enter their horses in that track's live races. The balance of the pooled wagers is retained by the wagering facility. Pari-mutuel wagering is currently authorized in more than 40 states in the United States, all provinces in Canada and approximately 100 other countries around the world.

We are seeking to increase wagering by broadening our customer base and increasing the wagering activity of our existing customers. To attract new customers, we seek to increase the racing knowledge of our customers through our television programming, and by providing "user friendly" automated wagering systems and comfortable surroundings. We also seek to attract new customers by offering various types of promotions including family fun days, premium give-away programs, contests and handicapping seminars.

Live Racing

Penn National Race Course. Penn National Race Course is located on approximately 225 acres approximately 15 miles northeast of Harrisburg, 100 miles west of Philadelphia and 200 miles east of Pittsburgh. There is a total population of approximately 1.4 million persons within a radius of approximately 35 miles around Penn National Race Course and approximately 2.2 million persons within a 50-mile radius. The property includes a one-mile all-weather, lighted thoroughbred racetrack and a $^{7}/_{8}$-mile turf track. The property also includes approximately 400 acres surrounding Penn National Race Course that are available for future expansion or development.

Pocono Downs. Pocono Downs is located on approximately 400 acres in Plains Township, outside Wilkes-Barre, Pennsylvania. There is a total population of approximately 785,000 persons within a radius of approximately 35 miles around Pocono Downs and approximately 1.5 million persons within a 50-mile radius. The property includes a $^{5}/_{8}$-mile all-weather, lighted harness track.

Charles Town Races. Charles Town Races at the Charles Town Entertainment Complex is located on a portion of a 250-acre parcel in Charles Town, West Virginia. The property includes a $^{3}/_{4}$-mile all-weather, lighted thoroughbred racetrack. The property surrounding the Charles Town Entertainment Complex, including the site of the former Shenandoah Downs Racetrack, is available for future expansion or development. In addition, we have a right of first refusal for an additional 250 acres that are adjacent to the Charles Town Entertainment Complex.

OTWS

Our OTWs provide areas for viewing import simulcasts and televised sporting events, placing pari-mutuel wagers and dining. The facilities also provide convenient parking. We presently operate 11 of the 20 OTWs now open in Pennsylvania. There are two remaining OTWs that have been authorized in Pennsylvania for our competitors. Some states, such as New York, operate off-track betting locations that are independent of racetracks. Under the Pennsylvania Racehorse Industry Reform Act, only licensed racing associations, such as Penn National, can operate OTWs or accept customer wagers on simulcast races at Pennsylvania racetracks. The following is a list of our OTW locations:

Facility/Location	Date Opened
Penn National Facilities:	
Reading, PA	May 1992
Chambersburg, PA	April 1994

York, PA	March 1995
Lancaster, PA	July 1996
Williamsport, PA	February 1997
Johnstown, PA	September 1998

Pocono Downs Facilities:	
Erie, PA	May 1991
Allentown, PA	July 1993
Carbondale, PA	March 1998
Hazleton, PA	March 1998
East Stroudsburg, PA	July 2000

We have been transmitting simulcasts of our races to other wagering locations and receiving simulcasts of races from other locations for wagering by our customers at our facilities year-round for more than seven years. During the year ended December 31, 2001, we received import simulcasts from approximately 100 racetracks, including premier racetracks such as Belmont Park, Church Hill Downs, Gulfstream Park, Hollywood Park, Santa Anita and Saratoga and transmitted export simulcasts of our races to approximately 300 locations.

Telephone Account Wagering/Internet Wagering

In 1983, we pioneered Telebet™, Pennsylvania's first telephone account wagering system. A Telebet customer opens an account by depositing funds with us. Account holders can then place wagers by telephone on Penn National races and import simulcast races to the extent of the funds on deposit in the account; any winnings are posted to the account and are available for withdrawal or future wagers. In December 1995, Pocono Downs instituted Dial-A-Bet™, a similar telephone account betting system.

eBetUSA.com, Inc., our wholly owned subsidiary, is a closed-loop, subscriber-based system that operates a pari-mutuel wagering platform across the Internet. eBetUSA.com operates in selected jurisdictions with the approval of the Pennsylvania State Horse Racing Commission and the Pennsylvania State Harness Racing Commission. The website technology is provided under a license agreement with eBet Limited of Australia.

In April 2001, we entered into an agreement with Playboy.com, Inc., a wholly owned subsidiary of Playboy Enterprises, Inc., to develop PlayboyRacingUSA.com, an online pari-mutuel horseracing wagering site. Under the terms of the agreement, we are responsible for day-to-day operations of the site and Playboy will be responsible for marketing related services, user interface and design. The site began operations in the third quarter of 2001 and is licensed and operated in Pennsylvania. Bettors from around the world will be able to access the site, however, the site will have safeguards to prevent the acceptance of wagering from jurisdictions where online pari-mutuel wagering is prohibited.

New Jersey Joint Venture—Pennwood Racing, Inc.

In October 1998, we formed a 50%-50% joint venture with Greenwood New Jersey, Inc., a subsidiary of Greenwood Racing, Inc. (the owner of Philadelphia Park Race Track) to acquire certain assets of Garden State Park and Freehold Raceway. In January 1999, Greenwood New Jersey consummated the acquisition on behalf of the joint venture. In July 1999, after receiving New Jersey Racing Commission approval, we completed our investment in the New Jersey joint venture through our interest in Pennwood Racing, Inc.

Through our interest in Pennwood Racing, Inc., we own Freehold Raceway in Freehold, New Jersey and held a leasehold interest in Garden State Park in Cherry Hill, New Jersey. Freehold Raceway is located on a 51-acre site in western Monmouth County, New Jersey and is the nation's oldest harness track. Daytime racing has been conducted at Freehold Raceway since 1853; pari-mutuel wagering commenced in 1941. The grandstand at Freehold Raceway is an approximately 150,000 square foot, five level, steel frame, enclosed, fully heated and air conditioned facility constructed in 1986 that can accommodate up to 10,000 spectators. The grandstand also has a sit-down restaurant and seven concession stands. Freehold Raceway is located less than 50 miles from New York City and less than 30 miles from Princeton and Trenton, New Jersey.

On November 30, 2000, the owner of Garden State Park, International Thoroughbred Breeders, Inc., announced that it had completed the sale of the Garden State Park property, excluding a 10-acre parcel owned by our joint venture, to Realen-Turnberry Cherry Hill, LLC. As a result of the sale and a decision by the new owner to develop the property for non-racing uses, our joint venture's lease at Garden State Park was terminated on May 29, 2001 and Garden State Park was closed. We do not believe that the termination of the Garden State Park lease and the cessation of racing at that facility has had a material adverse effect on our business, financial condition or results of operations.

We have agreed to guarantee up to 50% of the obligations of the joint venture under its original $23 million credit facility with Commerce Bank, N.A.

Agreements with Horsemen and Pari-Mutuel Clerks

We have agreements with the horsemen at each of our racetracks. The continuation of these agreements is required to allow us to conduct live racing and export and import simulcasting. In addition, our simulcasting agreements are subject to the horsemen's approval.

In February 1999, the Pennsylvania Thoroughbred Horsemen stopped racing at Penn National Race Course and withdrew their permission for us to import simulcast races from other racetracks, resulting in the closure of Penn National Race Course and six of our OTW facilities. As a result of the closure, our operations at Penn National Race Course were suspended for more than five weeks, we lost 46 race days at Penn National Race Course, and it took nearly six months from the beginning of the action before we returned to pre-action levels of operations. In March 1999, we signed a new agreement with the Pennsylvania Thoroughbred Horsemen that has an initial term that expires on January 1, 2004.

In December 1999, we signed a new horsemen agreement with the Pennsylvania Harness Horsemen that expires on January 16, 2003. We also have an agreement with the Charles Town Horsemen that expires on December 31, 2002.

In addition to our horsemen agreements, in order to operate gaming machines in West Virginia, we are required to enter into written agreements regarding the proceeds of our gaming machines at the Charles Town Entertainment Complex with the pari-mutuel clerks at Charles Town. Our agreement with the pari-mutuel clerks at Charles Town expires on December 31, 2004.

In addition, our New Jersey joint venture, Pennwood Racing, must maintain written agreements with the horsemen at Freehold Raceway in order to simulcast races to the Atlantic City casinos. Horsemen agreements are currently in effect at this facility.

Option to Manage the Charles Town Entertainment Complex

We acquired the Charles Town Entertainment Complex by exercising an option previously held by a subsidiary of Showboat, Inc., now a wholly owned subsidiary of Harrah's Entertainment, Inc. In assigning the option, Showboat retained the right to operate a casino at the Charles Town Entertainment Complex in return for a management fee, to be negotiated at the time of exercise, based on reasonable rates payable for similar properties. The express terms of the Showboat option do not specify what activities at the Charles Town Entertainment Complex would constitute operation of a casino. We do not believe that our installation and operation of gaming devices linked to the West Virginia lottery at the Charles Town Entertainment Complex constitutes the operation of a casino under the Showboat option or under West Virginia law or triggers Showboat's right to exercise the Showboat option. The rights under the Showboat option expired in November 2001.

On August 20, 2001, Showboat Development Company brought a lawsuit against us and certain other parties related to the Charles Town Entertainment Complex. The suit alleges, among other things, that our operation of coin-out video lottery terminals at the Charles Town facility constitutes the operation of a casino, thereby triggering the option. The suit also alleges that our March 2000 acquisition of the 11% minority interest in Charles Town Races from BDC Group, our former joint venture partner, was made in violation of a right of first refusal that Showboat holds from BDC covering the sale of any interest in any casino at Charles Town Races. We filed in federal district court in Nevada a motion to dismiss this action for lack of personal jurisdiction which was granted on January 25, 2002. On February 13, 2002, Showboat filed a lawsuit in the United States District Court for the Eastern District of Pennsylvania. The substance of the lawsuit was substantially similar to Showboat's previous claim filed in Nevada. See "Recent Developments—Showboat Litigation Settlement." We continue to believe that each of Showboat's claims is without merit, and we intend to vigorously defend ourselves against them. Even if there ultimately is a judgment against us in this case, we do not believe that it will have a material adverse effect on our financial condition or results of operations.

Employees and Labor Relations

As of February 28, 2002, we had 5,174 permanent employees, of whom 3,846 were full-time and 1,328 were part-time. Our employees in the admissions department and pari-mutuel department at Penn National Race Course, Pocono Downs and our OTWs are represented under collective bargaining agreements between us and the Sports Arena Employees' Union Local 137. The agreements extend until September 30, 2002 for track employees and September 30, 2001, which was extended until December 31, 2001, for OTW employees. We are continuing to negotiate with the OTW employees in the hopes of reaching a new agreement. The pari-mutuel clerks at Pocono Downs voted to unionize in June 1997. We have held negotiations with this union, but do not have a contract to date. The failure

to reach an agreement with this union would not result in the suspension or termination of our license to operate live racing at Pocono Downs or to conduct simulcast or OTW operations.

In order to operate gaming machines in West Virginia, we are required to enter into written agreements regarding the proceeds of the gaming machines with a representative of a majority of the horse owners and trainers, a representative of a majority of the pari-mutuel clerks and a representative of a majority of our horse breeders. We have an agreement with the Charles Town Horsemen that expires on December 31, 2002. The pari-mutuel clerks at Charles Town are represented under a collective bargaining agreement with the West Virginia Division of Mutuel Clerks, which expires on December 31, 2004.

Competition

Gaming Operations

The gaming industry is highly fragmented and characterized by a high degree of competition among a large number of participants, many of which have financial and other resources that are greater than our resources. Competitive gaming activities include casinos, video lottery terminals and other forms of legalized gaming in the United States and other jurisdictions.

Legalized gambling is currently permitted in various forms throughout the United States and in several Canadian provinces. Other jurisdictions may legalize gaming in the near future. In addition, established gaming jurisdictions could award additional gaming licenses or permit the expansion of existing gaming operations. New or expanded operations by other persons will increase competition for our gaming operations and could have a material adverse impact on us.

Charles Town, West Virginia. Our gaming machine operations at the Charles Town Entertainment Complex face competition from other gaming machine venues in West Virginia and in neighboring states (including Dover Downs, Delaware Park and Harrington Raceway in Delaware and the casinos in Atlantic City, New Jersey). These venues offer significantly higher stakes for their gaming machines than are permitted in West Virginia. Atlantic City, New Jersey does not have a per-pull limit on its gaming machines, while Delaware has a $25 per-pull limit. The per-pull limit in West Virginia is currently $5 per gaming machine. In addition to existing competition, both Pennsylvania and Maryland have in the past considered legislation to expand gaming in their respective states. The failure to attract or retain gaming machine customers at the Charles Town Entertainment Complex, whether arising from such competition or from other factors, could have a material adverse effect on our business, financial condition and results of operations.

Mississippi Gulf Coast. Dockside gaming has grown rapidly on the Mississippi Gulf Coast, increasing from no dockside casinos in 1992 to 12 operating dockside casinos at December 31, 2001. Nine of these facilities are located in Biloxi, two are located in Gulfport and one is located in Bay St. Louis. Our Mississippi casino operations have numerous competitors, many of which have greater name recognition and financial and marketing resources than we have. Competition in the Mississippi gaming market is significantly more intense than the competition our gaming operations face in West Virginia or our pari-mutuel operations face in Pennsylvania and New Jersey. We cannot be sure that we will succeed in the competitive Mississippi Gulf Coast gaming market. The failure to do so would have a material adverse effect on our business, financial condition and results of operations.

Louisiana. Casino Rouge faces competition from land-based and riverboat casinos throughout Louisiana and on the Mississippi Gulf Coast, casinos on Native American lands and from non-casino gaming opportunities within Louisiana. The Louisiana Riverboat Economic Development and Gaming Control Act limits the number of gaming casinos in Louisiana to fifteen riverboat casinos statewide and one land-based casino in New Orleans. All fifteen riverboat licenses are currently issued.

The principal competitor to Casino Rouge is the Argosy Casino, which is the only other licensed riverboat casino in Baton Rouge. In February 2001, a new 300-room Sheraton hotel opened at the Argosy Casino. We also face competition from three major riverboat casinos and one land-based casino in the New Orleans area, which is approximately 75 miles from Baton Rouge, and from three Native American casinos in Louisiana. The two closest Native American casinos are land-based facilities located

approximately 45 miles southwest and approximately 65 miles northwest of Baton Rouge. We also face competition from several truck stop gaming facilities located in certain surrounding parishes, each of which are authorized to operate up to 50 video poker machines.

Ontario. Our operation of Casino Rama through CHC Casinos Canada Limited faces competition in Ontario from a number of casinos and racetracks with gaming machine facilities. Currently, there are two other commercial casinos, five charity casinos and at least fifteen racetracks with gaming machines in the province of Ontario. All of the casinos and gaming machine facilities are operated on behalf of the Ontario Lottery and Gaming Corporation, an agency of the Province of Ontario. The Ontario Lottery and Gaming Corporation also operates several province-wide lotteries.

Casino Rama is located near Orillia, Ontario, approximately 90 miles north of Toronto. There is one charity casino and four racetracks with gaming machine facilities that directly compete with Casino Rama. One such racetrack is between Casino Rama and the City of Toronto, the largest urban center within 155 miles of the casino with more than 4 million people. The charity casino has 40 gaming tables and 450 gaming machines. The number of gaming machines at the racetracks range from 100 to 1,700 each.

There is an interim commercial casino located in Niagara Falls, Ontario, 80 miles southwest of Toronto with approximately 136 gaming tables and 2,800 gaming machines. It is contemplated that Niagara Falls will have a permanent casino with a similar number of gaming tables and gaming machines as the interim casino that is scheduled to be completed by the spring of 2003. In addition, it has been proposed in connection with the City of Toronto's waterfront revitalization project that a casino be located in downtown Toronto. However, we are not aware of any definitive plans for the development of such a casino.

Racing and Pari-mutuel Operation

Our racing and pari-mutuel operations face significant competition for wagering dollars from other racetracks and OTWs (some of which also offer other forms of gaming), other gaming venues such as casinos and state-sponsored lotteries, including the Pennsylvania, New Jersey, Delaware and West Virginia lotteries. We also may face competition in the future from new OTWs or from new racetracks. Presque Isle Downs has applied for a license to own and operate a thoroughbred racetrack in Erie, PA. If the license is granted and the track is built, it is expected to have a significant impact on our Erie OTW and the financial performance of Pocono Downs. From time to time, states consider legislation to permit other forms of gaming. If additional gaming opportunities become available near our racing and pari-mutuel operations, such gaming opportunities could have a material adverse effect on our business, financial condition and results of operations.

Our OTWs compete with the OTWs of other Pennsylvania racetracks, and new OTWs may compete with our existing wagering facilities. Our competitors have a number of OTW facilities that are near our OTWs. Although only two competing OTWs remain authorized by law for future opening, the opening of a new OTW or racetrack in close proximity to our existing or future OTWs could have a material adverse effect on our business, financial condition and results of operations.

Management

The following table provides information regarding our executive officers as of March 15, 2002 (except as to Messrs. DeSanctis and Clifford):

Name	Age	Position
Peter M. Carlino	55	Chairman of the Board and Chief Executive Officer
Kevin DeSanctis	49	President and Chief Operating Officer(1)
William Clifford	44	Senior Vice President Finance and Chief Financial Officer(1)
Robert S. Ippolito	50	Vice President, Secretary and Treasurer
Joseph A. Lashinger, Jr.	48	Vice President and General Counsel

(1) Subject to the receipt of necessary licensing and regulatory approval in certain jurisdictions, Messrs. DeSanctis and Clifford will become executive officers.

Our current executive officers, along with their backgrounds, are as follows:

Peter M. Carlino. Mr. Carlino has served as our Chairman of the Board and Chief Executive Officer since April 1994. Since 1976 he has been President of Carlino Financial Corporation, a holding company which owns and operates various Carlino family businesses, in which capacity he has been continuously active in strategic planning for Carlino Financial and monitoring its operations.

Kevin DeSanctis. In February 2001, Mr. DeSanctis joined the company. Prior to joining us, Mr. DeSanctis served from 1995 to 2000 as Chief Operating Officer, North America for Sun International Hotels Limited where he was responsible for complete oversight of day-to-day operations of the company's gaming properties in North America and the Bahamas. Prior to joining Sun International, Mr. DeSanctis' experience included management and pre-opening responsibilities for gaming operations in Las Vegas, Atlantic City, New Orleans and Colorado.

William Clifford. Mr. Clifford joined the company in August 2001. Prior to joining us, from March 1997 to July 2001, Mr. Clifford served as the Chief Financial Officer and Senior Vice President of Finance with Sun International Resorts, Inc., Paradise Island. From November, 1993 to February, 1997, Mr. Clifford was Financial, Hotel and Operations Controller for Treasure Island Hotel and Casino in Las Vegas. From May, 1989 to November 1993, Mr. Clifford was Controller for Golden Nugget Hotel and Casino, Las Vegas. Prior to May 1989, Mr. Clifford held the positions of Controller for the Dunes Hotel and Casino, Las Vegas, Property Operations Analyst with Aladdin Hotel and Casino, Las Vegas, Casino Administrator with Las Vegas Hilton, Las Vegas, Sr. Internal Auditor with Del Webb, Las Vegas and Agent, Audit Division, of the Nevada Gaming Control Board, Las Vegas and Reno.

Robert S. Ippolito. Mr. Ippolito, a certified public accountant, has served as Secretary and Treasurer of Penn National since April 1994 and as a Vice President since July 2001. From April 1994 to July 2001, Mr. Ippolito also served as Chief Financial Officer.

Joseph A. Lashinger, Jr., Esq. Mr. Lashinger was elected Vice President and General Counsel of Penn National in June 1997. Prior to joining us, Mr. Lashinger served as a consultant to us from 1996 to 1997. In 1997, Mr. Lashinger voluntarily filed for personal bankruptcy due in part to his personal guaranty of the debts of a failed business in which he was a part owner.

Regulation

General

We are subject to federal, state, local and, in Canada, provincial regulations related to our current live racing, pari-mutuel, gaming machine and casino operations. The following description of the regulatory environment in which we operate is only a summary and not a complete recitation of all applicable regulatory laws. Moreover, our current and proposed operations could be subjected at any time to additional or more restrictive regulations, or banned entirely.

West Virginia Racing and Gaming Regulation

Our operations at the Charles Town Entertainment Complex are subject to regulation by the West Virginia Racing Commission under the West Virginia Horse and Dog Racing Act, and by the West Virginia Lottery Commission under the West Virginia Racetrack Video Lottery Act. The powers and responsibilities of the West Virginia Racing Commission under the West Virginia Horse and Dog Racing Act extend to the approval and/or oversight of all aspects of racing and pari-mutuel wagering operations. We have obtained from the West Virginia Racing Commission a license to conduct racing and pari-mutuel wagering at the Charles Town Entertainment Complex. Pursuant to the West Virginia Racetrack Video Lottery Act, we have obtained approval for 3,500 gaming machines and video lottery terminals at the Charles Town Entertainment Complex, approximately 2,000 of which are currently in operation. In addition to licensing, in West Virginia, the legality of gaming machine operation in a particular county is determined by local option election in the county where the racetrack is located. The West Virginia Racetrack Video Lottery Act further provides that 5% of the qualified voters in the county where gaming machines have been permitted by local option election can petition for another election that may be held no sooner than five years after the first election.

The West Virginia Racetrack Video Lottery Act provides that the transfer of more than 5% of the voting stock of a corporation that holds a gaming machine license, or that controls another entity that holds such a license, or the transfer of the assets of a license holder may only be to persons who have met the licensing requirements of the West Virginia Racetrack Video Lottery Act or which transfer has been pre-approved by the West Virginia Lottery Commission. Any transfer that does not comply with this requirement voids the license.

On April 21, 2001, the West Virginia legislature passed a law increasing the maximum per pull wagering limit for gaming machines operated in the state from $2 per pull to $5 per pull. Revenues resulting from the limit increase are subject to taxes at a slightly higher rate.

Mississippi Regulatory Compliance

Our operation of Casino Magic Bay St. Louis and Boomtown Biloxi is subject to Mississippi regulatory compliance, a summary of which is provided below.

The ownership and operation of casino gaming facilities in Mississippi are subject to extensive state and local regulation primarily through the licensing and regulatory control of the Mississippi Gaming Commission and the Mississippi State Tax Commission. Penn National and certain of its subsidiaries must register and be licensed under the Mississippi Gaming Control Act, or the Mississippi Act, and our gaming operations are subject to the regulatory control of the Mississippi Gaming Commission, the Mississippi State Tax Commission and various local, city and county regulatory agencies. The Mississippi Act, which legalized dockside casino gaming in Mississippi, was enacted on June 29, 1990 and the Mississippi Gaming Commission adopted regulations, effective October 29, 1991, in furtherance of the Mississippi Act.

The laws, regulations and supervisory procedures of Mississippi and the Mississippi Gaming Commission seek to: (1) prevent unsavory or unsuitable persons from having direct or indirect

involvement with gaming at any time or in any capacity; (2) establish and maintain responsible accounting practices and procedures; (3) maintain effective control over the financial practices of licensees, including establishing minimum procedures for internal fiscal affairs and safeguarding assets and revenues, providing reliable record keeping and making periodic reports to the Mississippi Gaming Commission; (4) prevent cheating and fraudulent practices; (5) provide a source of state and local revenues through taxation and licensing fees; and (6) ensure that gaming licensees, to the extent practicable, employ Mississippi residents. The regulations are subject to amendment and interpretation by the Mississippi Gaming Commission.

The Mississippi Act provides for legalized dockside gaming in any of the 14 counties that border either the Gulf Coast or the Mississippi River, provided that the voters in an eligible county have not voted to prohibit gaming in that county. Voters have approved dockside gaming in nine of the 14 eligible counties in the state and gaming operations have commenced in Adams, Coahoma, Hancock, Harrison, Tunica, Warren and Washington counties. The law permits unlimited stakes gaming on a 24-hour basis and does not restrict the percentage of space that may be utilized for gaming. There are no limitations on the number of gaming licenses which may be issued in Mississippi. The legal age for gaming in Mississippi is 21.

We are required to submit detailed financial, operating and other reports to the Mississippi Gaming Commission and Mississippi State Tax Commission. Several of our transactions, such as loans and other financing transactions, leases and sales of securities require notice to and/or approval of the Mississippi Gaming Commission.

We have been investigated and on August 8, 2000, the Mississippi Gaming Commission issued us a gaming operator's license for Boomtown Biloxi and for Casino Magic Bay St. Louis. In addition, the Mississippi Gaming Commission has found certain of our key principals suitable.

Each of the officers and directors of Casino Magic Bay St. Louis and Boomtown Biloxi must be found suitable or must be licensed by the Mississippi Gaming Commission. In addition, certain of Penn National's directors, officers and employees may be required to be found suitable or be licensed if they are engaged in the administration or supervision of, or any other significant involvement with, the activities of Casino Magic or Boomtown Biloxi. Both a finding of suitability and license require submission of detailed financial information followed by a thorough investigation. Key employees, controlling persons or others who exercise significant influence upon Penn National's management or affairs may be deemed to have a material relationship to, or material involvement with us and may be investigated in order to be found suitable or required to be licensed. There can be no assurance that such persons will be found suitable or licensed by, and maintain such a suitability finding or license from, the Mississippi Gaming Commission. The Mississippi Gaming Commission has full and absolute power and authority to deny any application or limit, condition, restrict, revoke or suspend any lien, registration, finding of suitability or approvals, or fine any person licensed, registered, found suitable or approved, for any cause it deems reasonable. Changes in certain officer, director or key employee positions must be reported to the Mississippi Gaming Commission. In addition to its authority to deny an application for a license, the Mississippi Gaming Commission has jurisdiction to disapprove a change in a corporate position. If the Mississippi Gaming Commission were to find a director, officer or employee unsuitable for licensing or unsuitable to continue having a relationship with us, we would have to terminate such person's employment in any capacity in which such person is required to be found suitable or licensed and we would be prohibited from allowing such person to exercise a significant influence over the gaming establishment's operations. We would have similar obligations with regard to any person who refuses to file appropriate applications. No person may be employed as a gaming employee unless such person holds a work permit issued by the Mississippi Gaming Commission. An application for a work permit can be denied for any cause the Mississippi Gaming Commission deems reasonable, and the Mississippi Gaming Commission may summarily suspend or revoke a work permit upon the occurrence of certain specified events.

Mississippi statutes and regulations give the Mississippi Gaming Commission the discretion to require a suitability finding with respect to anyone who acquires any of Penn National's securities, regardless of the percentage of ownership. The current policy of the Mississippi Gaming Commission is to require anyone acquiring, directly or indirectly, 5% or more of any voting securities of a registered publicly traded holding company to be found suitable. However, the Mississippi Gaming Commission generally

permits certain "institutional" investors to beneficially own, directly or indirectly, up to 15% of the voting securities of a registered public company without a finding of suitability. If the owner of voting securities who is required to be found suitable is a corporation, partnership or trust, it must submit detailed business and financial information including a list of beneficial owners. The applicant is required to pay all costs of investigation.

Any owner of Penn National's voting securities found unsuitable and who holds, directly or indirectly, any beneficial ownership of our equity interests beyond such period of time as may be prescribed by the Mississippi Gaming Commission may be guilty of a misdemeanor. Any person who fails or refuses to apply for a finding of suitability or a license within 30 days of being ordered to do so by the Mississippi Gaming Commission may be found unsuitable. We are subject to disciplinary action if we, after receiving notice that a person is unsuitable to be an owner of or to have any other relationship with us, (1) pay the unsuitable person any dividends or interest upon any such security, (2) recognize the exercise, directly or through any trustee or nominee of any voting rights conferred by such security, or (3) pay the unsuitable person any remuneration in any form for services rendered or otherwise. In addition, if the Mississippi Gaming Commission finds any owner of voting securities of certain Penn National subsidiaries unsuitable, such owner must immediately offer all securities to us, and we must purchase the securities so offered for cash at fair market value within 10 days.

We will be required to maintain current ownership ledgers in the State of Mississippi that may be examined by the Mississippi Gaming Commission at any time. If any securities are held in trust by an agent or by a nominee, the record holder may be required to disclose the identity of the beneficial owner to the Mississippi Gaming Commission. A failure to make such disclosure may be grounds for finding the record holder unsuitable. We are also required to render maximum assistance in determining the identity of the beneficial owner. We may be required to disclose to the Mississippi Gaming Commission, the identities of the holders of certain of our indebtedness. In addition, the Mississippi Gaming Commission under the Mississippi Act may, in its discretion, (1) require holders of debt securities to file applications, (2) investigate such holders, and (3) require such holders to be found suitable to own such debt securities. Although the Mississippi Gaming Commission generally does not require the individual holders of obligations to be investigated and found suitable, the Mississippi Gaming Commission retains the discretion to do so for any reason, including but not limited to a default, or where the holder of the debt instrument exercises a material influence over the gaming operations of the entity in question. Any holder of the debt securities required to apply for a finding of suitability must pay all investigative fees and costs of the Mississippi Gaming Commission in connection with such an investigation.

The regulations provide that we may not engage in any transaction that would result in a change of our control without the prior approval of the Mississippi Gaming Commission. Mississippi law prohibits Penn National and certain of its subsidiaries from making a public offering or private placement of our securities without the prior approval of the Mississippi Gaming Commission if any part of the proceeds of the offering is to be used to finance the construction, acquisition or operation of gaming facilities in Mississippi, or to retire or extend obligations incurred for one or more of such purposes. The Mississippi Gaming Commission has the authority to grant a continuous approval of securities offerings and has granted us such approval, subject to renewal.

Regulations of the Mississippi Gaming Commission prohibit certain repurchases of securities of publicly traded corporations registered with the Mississippi Gaming Commission without prior approval of the Mississippi Gaming Commission. Transactions covered by these regulations are generally aimed

at discouraging repurchases of securities at a premium over market price from certain holders of greater than 3% of the outstanding securities of the registered publicly traded corporation. The regulations of the Mississippi Gaming Commission also require prior approval for a "plan of recapitalization" as defined in such regulations.

The Mississippi Act requires that certificates representing our securities bear a legend to the general effect that the securities are subject to the Mississippi Act and regulations of the Mississippi Gaming Commission. The Mississippi Gaming Commission, through the power to regulate licensees, has the power to impose additional restrictions on the holders of our securities at any time.

We may not engage in gaming activities in Mississippi while also conducting gaming operations outside of Mississippi without approval of the Mississippi Gaming Commission. Such approvals were initially granted to us by the Mississippi Gaming Commission as part of the original licensure process, and additional approvals must be obtained on a jurisdiction-by-jurisdiction basis. The failure to obtain or retain any such approval could have a material adverse effect on us.

We may not transfer any of our licenses and we must renew each license every three years. There can be no assurance that any of our renewal applications will be approved. The Mississippi Gaming Commission may at any time dissolve, suspend, condition, limit or restrict a license or approval to own equity interests in us for any cause it deems reasonable. We may have substantial fines levied against us in Mississippi for each violation of gaming laws or regulations. A violation under any gaming license held by us may be deemed a violation of the Mississippi licenses held by us. Suspension or revocation of the Mississippi licenses or of the Mississippi Gaming Commission's approval of us would have a material adverse effect upon our business.

In October 1994, the Mississippi Gaming Commission adopted a regulation requiring, as a condition of licensure or license renewal, that a gaming establishment's site development plan include an approved 500-car parking facility in close proximity to the casino complex and infrastructure facilities that amount to at least 25% of the casino cost. Such facilities may include any of the following: a 250-room hotel of at least a two star rating, as defined by the current edition of the Mobil Travel Guide; a theme park; a golf course; marinas; a tennis complex; entertainment facilities; or any other such facility as approved by the Mississippi Gaming Commission as infrastructure. Parking facilities, roads, sewage and water systems or facilities normally provided by governmental entities are excluded. The Mississippi Gaming Commission may, in its discretion, reduce the number of hotel rooms required where it is shown, to the satisfaction of the Mississippi Gaming Commission, that sufficient rooms are available to accommodate the anticipated visitor load. Such reduction in the number of rooms does not affect the 25% investment requirement imposed by the regulation. Casino Magic Bay St. Louis, Boomtown Biloxi and related facilities have complied with these requirements. In January 1999, the Mississippi Gaming Commission amended this infrastructure regulation by increasing the minimum level of infrastructure investment from 25% to 100% of the casino cost. However, the 100% infrastructure investment requirement applies only to new casino developments and existing casino developments that are not in operation at the time of their acquisition or purchase, and therefore does not apply to Casino Magic Bay St. Louis and Boomtown Biloxi. In any event, Casino Magic Bay St. Louis and Boomtown Biloxi will attempt to comply with such requirements.

License fees and taxes are payable to the State of Mississippi and to the counties and cities in which our Mississippi subsidiaries operate. One of the license fees payable to the state of Mississippi is based upon gross revenue of the licensee (generally defined as gaming receipts less payout to customers as winnings) and equals 4% of the first $50,000 of monthly gross revenue, 6% of the next $84,000 of monthly gross revenue and 8% of all monthly gross revenue over $134,000. These license fees are allowed as a credit against the licensee's Mississippi income tax liability for the year paid. Additionally, a licensee must pay a $5,000 annual license fee and an annual fee based upon the number of games it operates. Mississippi communities and counties may impose fees on licensees equaling 0.4% the first $50,000 of monthly gross revenues, 0.6% of the next $84,000 of monthly gross revenue and 0.8% of all

monthly gross revenues over $134,000. These fees have been imposed in, among other cities, Bay St. Louis, Gulfport, Biloxi, Natchez, Greenville and Vicksburg, and in among other counties, Coahoma County, Hancock County and Tunica County. Certain local and private laws of the State of Mississippi may impose fees or taxes on our Mississippi subsidiaries in addition to the fees described above.

The Mississippi Gaming Commission requires, as a condition of licensure or license renewal, that casino vessels on the Mississippi Gulf Coast that are not self-propelled be moored to withstand a Category 4 hurricane with 155 mile-per-hour winds and 15-foot tidal surge. We believe that all of our Mississippi gaming operations currently meet

this requirement. A 1996 Mississippi Gaming Commission regulation prescribes the hurricane emergency procedure to be used by the Mississippi Gulf Coast casinos.

The sale of alcoholic beverages, including beer and wine, at Casino Magic Bay St. Louis and Boomtown Biloxi is subject to permitting, control and regulation by the Mississippi State Tax Commission. The Miscellaneous Tax Division of the Mississippi State Tax Commission regulates the sale of beer and light wine. The Alcoholic Beverage Control Division of the Mississippi State Tax Commission, or ABC, regulates the sale of alcoholic beverages containing more than 5% alcohol by weight. ABC requires that all Casino Magic Bay St. Louis and Boomtown Biloxi officers, directors, majority shareholders and ABC managers file personal record forms and fingerprint cards. In addition, owners of more than 5% of Casino Magic Bay St. Louis or Boomtown Biloxi equity must submit detailed financial information to ABC. All such permits are revocable and are non-transferable. The Mississippi State Tax Commission has full power to limit, condition, suspend or revoke any such permit, and any such disciplinary action could, and revocation would, have a material adverse effect on the operations of Casino Magic Bay St. Louis and Boomtown Biloxi.

Louisiana Regulation

We are subject to regulation by the State of Louisiana as a result of our ownership of LCCI, the operator of the Casino Rouge riverboat.

In July 1991, the Louisiana legislature adopted legislation permitting certain types of gaming activity on certain rivers and waterways in Louisiana. Since May 1, 1999, the Louisiana Gaming Control Board, or the Louisiana Board, has regulated such gaming activities.

The Louisiana Riverboat Economic Development and Gaming Control Act authorized the issuance of up to fifteen licenses to conduct gaming activities on a riverboat of new construction in accordance with applicable law. However, no more than six licenses may be granted to riverboats operating from any one parish. Of the fifteen available licenses, fourteen are currently in operation. The final license has been awarded to a subsidiary of Pinnacle Entertainment for Lake Charles, Louisiana and is currently under construction.

Riverboat gaming licenses in Louisiana are issued for an initial five-year term with five year renewals thereafter. In issuing or renewing a license, the Louisiana Board must find that the applicant is a person of good character, honesty and integrity and that the applicant is a person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of the State of Louisiana or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of business and financial arrangements in connection therewith. The Louisiana Board will grant or renew a license if it finds that: (a) the applicant can demonstrate the capability, either through training, education, business experience, or a combination of the above, to operate a gaming casino; (b) the proposed financing of the riverboat and the gaming operation is adequate for the nature of the proposed operation and from a source suitable and acceptable to the Louisiana Board; (c) the applicant demonstrates a proven ability to operate a vessel of comparable size, capacity and complexity to a riverboat so as to ensure the safety of its passengers, with relevant employees being appropriately United States Coast Guard certified; (d) the applicant submits a detailed plan of design of the riverboat in its application for a license; (e) the applicant designates the docking facilities to be used by the riverboat; (f) the applicant shows adequate financial ability to construct and maintain a riverboat; and (g) the applicant has a good faith plan to recruit, train and upgrade minorities in all employment classifications.

LCCI's original five-year gaming license for the Casino Rouge expired in July 1999. On June 15, 1999, LCCI received conditional license approval from the Louisiana Board until the completion of the investigation and approval by the Board with respect to the renewal. On March 29, 2001, in addition to approving the CRC acquisition, the Louisiana Board renewed LCCI's license through June 2005, subject to several conditions. The conditions imposed by the Louisiana Board have either already been complied with or are voluntary and standard procurement and employment conditions routinely imposed on licensees in the state of Louisiana.

Other regulations imposed by the Louisiana Act or rules adopted pursuant thereto include, but are not limited to, the following: (a) LCCI, and Penn National must periodically submit financial and operating reports to the Louisiana Board; (b) owners holding greater than a 5% interest or who are officers or directors of LCCI or Penn National must be found suitable by the Louisiana Board; (c) any individual who is found to have a material relationship to, or involvement with, LCCI may be required to be investigated for suitability; (d) if a director, officer, or key employee were found to be unsuitable, LCCI and Penn National would have to sever all relationships with that person; (e) the transfer of a license or permit or an interest in a license or permit is prohibited without prior approval; (f) LCCI must notify the Louisiana Board of any withdrawals of capital, loans, advances, or distributions in excess of 5% of retained earnings upon completion of such transaction; and (g) LCCI must give prior notification to the Louisiana Board if it applies or receives, accepts or modifies the terms of any loan or other financing transaction. In some cases, the Louisiana Board will be required to investigate the reported transaction and to either approve or disapprove the transaction.

The Louisiana Act or rules adopted pursuant thereto contain certain restrictions and conditions relating to the operation of riverboat gaming, including the following: (a) agents of the Louisiana Board are permitted on board at any time during gaming operations; (b) gaming devices, equipment and supplies may only be purchased or leased from permitted suppliers; (c) gaming may only take place in the designated gaming area while the riverboat is upon a designated river or waterway; (d) gaming equipment may not be possessed, maintained or exhibited by any person on a riverboat except in the specifically designated gaming area, or a secure area used for inspection, repair or storage of such equipment; (e) wagers may be received only from a person present on a licensed riverboat; (g) persons under 21 are not permitted on gaming vessels; (h) except for slot machine play, wagers may be made only with tokens, chips or electronic cards purchased from the licensee aboard a riverboat; (i) licensees may only use docking facilities for which they are licensed and may only board and discharge

passengers at the riverboat's licensed berth; (j) licensees must have adequate protection and indemnity insurance; (k) licensees must have all necessary federal and state licenses, certificates and other regulatory approvals prior to operating a riverboat; and (l) gaming may only be conducted in accordance with the terms of the license, the Louisiana Act and the rules and regulations adopted by the Louisiana Board.

Fees for conducting gaming activities on a riverboat pursuant to the Louisiana Act include (i) $50,000 per riverboat for the first year of operation and $100,000 per year per riverboat thereafter plus (ii) 21.5% of net gaming proceeds. The Louisiana Act also authorizes the local governing body to assess a boarding fee up to $2.50 in East Baton Rouge Parish. The City of Baton Rouge has imposed an admission fee of $2.50 for each patron boarding the vessel. For calendar year ended December 31, 2001, LCCI's boarding fee expense was $3,905,455. For competitive reasons, LCCI and its Baton Rouge competitor have elected not to collect boarding fees from patrons and instead pay those fees from their respective earnings.

Proposals to amend or supplement the Louisiana Act are frequently introduced in the Louisiana State legislature. In addition, the state legislature from time to time considers proposals to repeal the Louisiana Act, which would effectively prohibit riverboat gaming in the State of Louisiana. Although LCCI does not believe that a prohibition of riverboat gaming in Louisiana is likely, no assurance can be given that changes in the Louisiana gaming law will not occur or that such changes will not have a material adverse affect on LCCI's business. On November 5, 1996, in the six parishes in which riverboats are currently located, including East Baton Rouge Parish, voters approved the continuation of riverboat gaming. In East Baton Rouge Parish and the six parishes as a whole, the vote in favor of riverboat gaming was 59% and 66%, respectively. Legislation may be proposed that could involve the repeal of dockside gaming or an increase in taxes, either of which could have a negative impact on our future gaming revenue.

In March 2001, Louisiana passed Act 3 of the 1st Extraordinary Legislative Session which allows Riverboat gaming licenses to operate dockside. Prior to the legislation, LCCI was required to maintain up to eight cruises daily, subject to weather and other conditions. In consideration of this change, the tax on gross gaming revenues was increased from 18.5% to 21.5%, effective April 1, 2001. We cannot be sure that the additional revenues generated by dockside gaming will offset the additional tax burden.

Ontario Regulation

Our gaming operations in Ontario at Casino Rama are subject to the regulatory control of the Alcohol and Gaming Commission of Ontario pursuant to the Gaming Control Act and the contractual provisions in the Development and Operating Agreement among CRC, CHC Casinos, the Ontario Lottery and Gaming Corporation, the Mnjikaning First Nation and certain other parties.

Our wholly-owned subsidiary, CHC Casinos Canada Limited, is required under the Gaming Control Act to be registered as a casino operator with the Alcohol and Gaming Commission of Ontario and must operate in accordance with the terms and conditions of its registration.

Pursuant to the Gaming Control Act and the terms of CHC Casinos' registration, the Registrar of Alcohol and Gaming must approve any change in the directors or officers of CHC Casinos. The Alcohol and Gaming Commission of Ontario may require the submission of information or material from any person who has an interest in CHC Casinos. This includes parent companies such as Penn National and their directors and officers.

The Registrar of Alcohol and Gaming has the power, subject to the Gaming Control Act, to grant, renew, suspend or revoke registrations. The Registrar is entitled to make such inquiries and conduct such investigations as are necessary to determine that applicants for registration meet the requirements of the Gaming Control Act and to require information or material from any person who has an interest

in an applicant for registration. Under the Gaming Control Act, a person shall be deemed to be "interested" in another person if: (a) the first person has, or may have in the opinion of the Registrar based on reasonable grounds, a beneficial interest in the other person's business; (b) the first person exercises, or may exercise, in the opinion of the Registrar based on reasonable grounds, control either directly or indirectly over the other person's business; or (c) the first person has provided, or may have provided, in the opinion of the Registrar based on reasonable grounds, financing either directly or indirectly to the other person's business. The criteria to be considered in connection with registration under the Gaming Control Act include the financial responsibility, integrity and honesty of the applicant, and the public interest. The Registrar may, at any time, revoke, suspend or refuse to renew CHC Casinos' registration for any reason that would have disentitled it to registration.

In addition, any person who supplies a casino with goods and services must be registered with the Alcohol and Gaming Commission of Ontario. Key employees who engage in the administration or supervision of gaming or the operation of gaming premises must also be registered with this agency.

The Development and Operating Agreement imposes certain obligations on CHC Casinos relating to the operation of Casino Rama including obtaining all necessary government consents required to operate various components of the casino in accordance with applicable law and ensuring that all persons retained by it for the provision of goods and services to the various components of the casino are also registered as required by law.

Pennsylvania Racing Regulations

Our horse racing operations at Penn National Race Course and Pocono Downs are subject to extensive regulation under the Pennsylvania Racing Act, which established the Pennsylvania State Horse Racing Commission and the Pennsylvania State Harness Racing Commission (referred to herein as the Pennsylvania Racing Commissions) which are responsible for, among other things:

- granting permission annually to maintain racing licenses and schedule races;
- approving, after a public hearing, the opening of additional OTWs;
- approving simulcasting activities;
- licensing all officers, directors, racing officials and certain other employees of a company; and
- approving all contracts entered into by a company affecting racing, pari-mutuel wagering and OTW operations.

As in most states, the regulations and oversight applicable to our operations in Pennsylvania are intended primarily to safeguard the legitimacy of the sport and its freedom from inappropriate or criminal influences. The Pennsylvania Racing Commissions have broad authority to regulate in the best interests of racing and may, to that end, disapprove the involvement of certain personnel in our operations, deny approval of certain acquisitions following their consummation or withhold permission for a proposed OTW site for a variety of reasons, including community opposition. The Pennsylvania legislature also has reserved the right to revoke the power of the Pennsylvania Racing Commissions to approve additional OTWs and could, at any time, terminate pari-mutuel wagering as a form of legalized gaming in Pennsylvania or subject such wagering to additional restrictive regulation or taxation; such termination would, and any further restrictions could, have a material adverse effect upon our business, financial condition and results of operations.

We may not be able to obtain or maintain all necessary approvals for the continued operation of our business. We have had continued permission from the Pennsylvania State Horse Racing Commission to conduct live racing at the Penn National Race Course since we commenced operations in 1972, and have obtained permission from the Pennsylvania State Harness Racing Commission to conduct live racing at Pocono Downs. Currently, we have approval from the Pennsylvania Racing

Commissions to operate the eleven OTWs that are currently open. A Commission may refuse to grant permission to continue to operate existing facilities. The failure to obtain or maintain required regulatory approvals could have a material adverse effect upon our business, financial condition and results of operations.

The Pennsylvania Racing Act requires that any shareholder proposing to transfer beneficial ownership of 5% or more of our shares file an affidavit with us setting forth certain information about the proposed transfer and transferee, a copy of which we are required to furnish to the Pennsylvania Racing Commissions. The certificates representing our shares owned by 5% beneficial shareholders are required to bear certain legends prescribed by the Pennsylvania Racing Act. In addition, under the Pennsylvania Racing Act, the Pennsylvania Racing Commissions have the authority to order a 5% beneficial shareholder of a company to dispose of his common stock of such company if it determines that continued ownership would be inconsistent with the public interest, convenience or necessity or the best interest of racing generally.

New Jersey Regulation

Our joint venture's operations at Freehold Raceway in New Jersey are subject to regulation (i) by the New Jersey Racing Commission under the Racing Act of 1940, as amended and supplemented and the rules and regulations of the Racing Commission and (ii) by the New Jersey Casino Control Commission under the Casino Control Act and Casino Simulcasting Act.

Under the Racing Act, all pari-mutuel employees and all others who are connected with the training of horses or the conduct of races, must be licensed by the Racing Commission. In addition, no person may hold or acquire, directly or indirectly, beneficial ownership of 5% or more of the voting securities of the joint venture without the prior approval of the Racing Commission.

At least 85% of the persons employed by the New Jersey joint venture at Freehold Raceway must be residents of New Jersey (excluding jockeys, drivers or apprentices, exercise boys, owners, trainers, clockers, governing and managing officials and heads of departments of the track). The Racing Commission has the authority to require that the joint venture discharge any employee who: (i) fails or refuses for any reason to comply with the rules and regulations of the Racing Commission; (ii) in the opinion of the Racing Commission is guilty of fraud, dishonesty or incompetency; (iii) has been convicted of a crime involving moral turpitude; or (iv) fails or refuses for any reason to comply with any of the provisions of the Racing Act.

Additional restrictions and/or requirements imposed by the Racing Commission on the joint venture's racetrack operations include, but are not limited to, the setting of the admission price required to be charged by the joint venture, a requirement that the joint venture (and all other racetracks operating in New Jersey) must schedule at least one race per day limited to registered New Jersey-bred foals and the methods the joint venture may use to distribute pari-mutuel pools and "breaks" (the odd cents remaining after computing the amount due holders of winning pari-mutuel tickets). The Racing Commission also regulates the manner of keeping of certain of the joint venture's books and records.

The Racing Commission is also responsible for the allocation of racing dates based upon the annual application of the permit holder. The joint venture is entitled to race the same number of dates as in the preceding year, when it is in the public interest to do so, or for such other dates, not exceeding 100 days in the aggregate for harness racing and 75 days in the aggregate for thoroughbred racing, as the Racing Commission shall designate; provided, however that if another permit holder rejects any of the dates to which they may be entitled the Racing Commission may allot those dates among other permitholders. The Racing Commission has discretion to allot harness race permitholders an additional 200 days and thoroughbred race permitholders an additional 100 days.

The failure to comply with the Racing Act and the rules and regulations of the Racing Commission could result in monetary fines, operations restrictions or the loss of our license.

Because the joint venture simulcasts to Atlantic City casinos, the joint venture's simulcasting agreements are required to be filed with and approved by the Casino Control Commission and the New Jersey Racing Commission. In addition, the joint venture is required to be approved and licensed by the Casino Control Commission as a non-gaming casino service industry. Certain of the joint venture's employees and its directors and significant stockholders are also required to be approved by the Casino Control Commission. As of the date hereof, all of the joint venture's employees and directors required to be approved have been approved by the Casino Control Commission or have filed applications seeking such approval. There can be no assurance that all parties seeking Casino Control Commission approval will obtain such approval or the effect on the joint venture if such approvals are not obtained.

State and Federal Simulcast Regulation

The Federal Interstate Horseracing Act, the Pennsylvania Racing Act, the West Virginia Racing Act and the New Jersey Simulcasting Racing Act require that we have a written agreement with each applicable horsemen's organization in order to simulcast races. We have entered into the horsemen agreements, and in accordance therewith have agreed on the allocations of our revenues from import simulcast wagering to the purse funds for the Penn National Race Course, Charles Town Races, Pocono Downs and Freehold Raceway. Because we cannot conduct import simulcast wagering in the absence of the horsemen agreements, the termination or non-renewal of such horsemen agreements could have a material adverse effect on our business, financial condition and results of operations.

Taxation

We believe that the prospect of significant additional revenue is one of the primary reasons that jurisdictions permit legalized gaming. As a result, gaming companies are typically subject to significant taxes and fees in addition to normal federal, state, local and, in Canada, provincial income taxes, and such taxes and fees are subject to increase at any time. We pay substantial taxes and fees with respect to our operations. From time to time, federal, state, local and provincial legislators and officials have proposed changes in tax laws, or in the administration of such laws, affecting the gaming industry. It is not possible to determine with certainty the likelihood of changes in tax laws or in the administration of such laws. Such changes, if adopted, could have a material adverse effect on our business, financial condition and results of operations.

IRS Regulations and Currency Transaction Reporting

The Internal Revenue Service, or IRS, requires operators of casinos located in the United States to file information returns for U.S. citizens, including names and addresses of winners, for all winnings in excess of stipulated amounts. The IRS also requires operators to withhold taxes on certain winnings of nonresident aliens. We are unable to predict the extent, if any, to which such requirements, if extended, might impede or otherwise adversely affect operations of, and/or income from, such other games.

Regulations adopted by the Financial Crimes Enforcement Network of the Treasury Department and the gaming regulatory authorities in certain domestic jurisdictions in which we operate casinos require the reporting of currency transactions in excess of $10,000 occurring within a gaming day, including identification of the patron by name and social security number. This reporting obligation commenced in May 1985 and may have resulted in the loss of casino revenues to jurisdictions outside the United States that are exempt from the ambit of such regulations. The operation of Casino Rama is subject to similar requirements under Canadian federal law and provincial gaming legislation.

Compliance with Other Laws

Our operations are also subject to a variety of other rules and regulations, including zoning, environmental, construction and land-use laws and regulations governing the serving of alcoholic beverages. We derive a significant portion of our non-racing revenues from the sale of alcoholic beverages to patrons of our facilities. Any interruption or termination of our existing ability to serve alcoholic beverages would have a material adverse effect on our business, financial condition and results of operations.

Risks Related to Our Business

A substantial portion of our revenues and EBITDA is derived from our Charles Town facility.

Approximately 37.3% and 45.2% of our revenue and EBITDA, respectively, for the year ended December 31, 2001 was derived from our Charles Town operations. If, among other things, new competitors enter the market, economic conditions in the region deteriorate or a business interruption occurs, our operating revenues and cash flow could decline significantly.

We may face disruption in integrating and managing facilities we may acquire or expand.

We expect to continue pursuing expansion and acquisition opportunities and could face significant challenges in managing and integrating the expanded or combined operations. For example, in August 2001, we signed a definitive agreement to acquire all of the assets of the Bullwhackers casino operations in Black Hawk, Colorado. We currently expect the acquisition will close in the second quarter of 2002. Management of new properties, especially in new geographic areas, may require that we increase our managerial resources. If we fail to effectively manage any growth we may have, it could materially adversely affect our operating results.

The integration of the Bullwhackers operations and any other properties we may acquire will require the dedication of management resources that may temporarily detract attention from our day-to-day business. The process of integrating Bullwhackers, and potentially other properties, also may interrupt the activities of those businesses, which could have a material adverse effect on our business, financial condition and results of operations. We cannot assure you that we will be able to manage the combined operations effectively or realize any of the anticipated benefits of our acquisitions.

Our ability to achieve our objectives in connection with any acquisition we may consummate may be highly dependent on, among other things, our ability to retain the senior property level management teams of such acquisition candidates. If, for any reason, we are unable to retain these management teams following such acquisitions or if we fail to attract new capable executives, our operations after consummation of such acquisitions could be materially adversely affected.

We face risks related to the development and expansion of our current properties.

We expect to use a portion of our cash on hand, cash flow from operations and available borrowings under our revolving credit facility for capital expenditures at the Charles Town Entertainment Complex and at Casino Magic Bay St. Louis, including the construction of the new hotel at the latter facility. The construction of the hotel at Casino Magic Bay St. Louis involves substantial risks, including the possibility of construction cost over-runs and delays due to various factors (including regulatory approvals, inclement weather and labor or material shortages), market deterioration after construction has begun, and the emergence of competition from unanticipated sources. The opening of the new hotel at Bay St. Louis will be contingent upon, among other things, receipt of all required licenses, permits and authorizations. The scope of the approvals required for the new hotel at Bay St. Louis is extensive, including, without limitation, state and local land-use permits, building and zoning permits and health and safety permits. In addition, unexpected changes or concessions required by

local, regulatory and state authorities could involve significant additional costs and could delay or prevent the completion of construction or the opening of a new hotel. We cannot be sure that we will obtain the necessary permits, licenses and approvals for the construction and operation of the new hotels, or that we will obtain such permits, licenses and approvals within the anticipated time frame.

We also are implementing enhancements at the Charles Town Entertainment Complex, including the expansion of the gaming floor and the construction of a structured parking lot. These planned enhancements involve similar risks to hotel construction risks including cost over-runs, delays, market deterioration and receipt of required licenses, permits or authorizations, among others.

The opening of the new hotel at Bay St. Louis and the other proposed enhancements also will require us to significantly increase the size of our existing work force at the property. We cannot be certain that management will be able to hire and retain a sufficient number of employees to operate these facilities at their optimal levels. The failure to employ the necessary work force could result in inadequate customer service which could ultimately harm profitability.

Prior to August 2000, our gaming experience did not include casino operations.

Our Charles Town Entertainment Complex has featured gaming machines since 1997, but does not include the full complement of casino, entertainment and other amenities available at traditional casinos. Through acquisitions beginning August 2000, however, we began operating and managing full-scale casinos in Mississippi, Louisiana and Canada. We cannot be sure that we will be successful in managing and operating our business in response to the challenges of conducting full-scale casino operations in highly competitive gaming markets. These challenges are made more difficult as a result of the ongoing expansion of our Charles Town and Bay St. Louis properties. Our failure to meet these challenges may have a material adverse effect on our business, financial condition and results of operations.

We face significant competition.

—Gaming Operations

The gaming industry is highly fragmented and characterized by a high degree of competition among a large number of participants, many of which have financial and other resources that are greater than our resources. Competitive gaming activities include casinos, video lottery terminals and other forms of legalized gaming in the United States and other jurisdictions.

Legalized gambling is currently permitted in various forms throughout the United States and in several Canadian provinces. Other jurisdictions may legalize gaming in the near future. In addition, established gaming jurisdictions could award additional gaming licenses or permit the expansion of existing gaming operations. New or expanded operations by other persons will increase competition for our gaming operations and could have a material adverse impact on us.

Charles Town, West Virginia. Our gaming machine operations at the Charles Town Entertainment Complex face competition from other gaming machine venues in West Virginia and in neighboring states (including Dover Downs, Delaware Park and Harrington Raceway in Delaware and the casinos in Atlantic City, New Jersey). These venues offer significantly higher stakes for their gaming machines than are permitted in West Virginia. Atlantic City, New Jersey does not have a per-pull limit on its gaming machines, while Delaware has a $25 per-pull limit. The per-pull limit in West Virginia is currently $5 per gaming machine. In addition to existing competition, both Pennsylvania and Maryland have in the past considered legislation to expand gaming in their respective states. The failure to attract or retain gaming machine customers at the Charles Town Entertainment Complex, whether arising from such competition or from other factors, could have a material adverse effect on our business, financial condition and results of operations.

Mississippi Gulf Coast. Dockside gaming has grown rapidly on the Mississippi Gulf Coast, increasing from no dockside casinos in March 1992 to 12 operating dockside casinos at December 31, 2001. Nine of these facilities are located in Biloxi, two are located in Gulfport and one is located in Bay St. Louis. Our Mississippi casino operations have numerous competitors, many of which have greater name recognition and financial and marketing resources than we have. Competition in the Mississippi gaming market

is significantly more intense than the competition our gaming operations face in West Virginia or our pari-mutuel operations face in Pennsylvania and New Jersey. We cannot be sure that we will succeed in the competitive Mississippi Gulf Coast gaming market. The failure to do so would have a material adverse effect on our business, financial condition and results of operations.

Louisiana. Casino Rouge faces competition from land-based and riverboat casinos throughout Louisiana and on the Mississippi Gulf Coast, casinos on Native American lands and from non-casino gaming opportunities within Louisiana. The Louisiana Riverboat Economic Development and Gaming Control Act limits the number of gaming casinos in Louisiana to fifteen riverboat casinos statewide and one land-based casino in New Orleans. All fifteen riverboat licenses are currently issued.

The principal competitor to Casino Rouge is the Belle of Baton Rouge, which is the only other licensed riverboat casino in Baton Rouge. In February 2001, a new 300-room Sheraton hotel opened at the Belle of Baton Rouge. We also face competition from three major riverboat casinos and one land-based casino in the New Orleans area, which is approximately 75 miles from Baton Rouge, and from three Native American casinos in Louisiana. The two closest Native American casinos are land-based facilities located approximately 45 miles southwest and approximately 65 miles northwest of Baton Rouge. We also face competition from several truck stop gaming facilities located in certain surrounding parishes, each of which are authorized to operate up to 50 video poker machines.

Ontario. Our operation of Casino Rama through CHC Casinos Canada Limited will face competition in Ontario from a number of casinos and racetracks with gaming machine facilities. Currently, there are two other commercial casinos, five charity casinos and at least fifteen racetracks with gaming machines in the province of Ontario. All of the casinos and gaming machine facilities are operated on behalf of the Ontario Lottery and Gaming Corporation, an agency of the Province of Ontario. The Ontario Lottery and Gaming Corporation also operates several province-wide lotteries.

Casino Rama is located near Orillia, Ontario, approximately 90 miles north of Toronto. There is one charity casino and three racetracks with gaming machine facilities that directly affect Casino Rama. The charity casino has 40 gaming tables and 450 gaming machines. The number of gaming machines at the racetracks range from 100 to 1,700 each.

There is an interim commercial casino located in Niagara Falls, Ontario, 80 miles southwest of Toronto with approximately 135 gaming tables and 2,000 gaming machines. It is contemplated that Niagara Falls will have a permanent casino with a similar number of gaming tables and gaming machines as the interim casino that is scheduled to be completed by the spring of 2002. In addition, it has been proposed in connection with the City of Toronto's waterfront revitalization project that a casino be located in downtown Toronto. However, we are not aware of any definitive plans for the development of such a casino.

—Racing and pari-mutuel operations

Our racing and pari-mutuel operations face significant competition for wagering dollars from other racetracks and OTWs (some of which also offer other forms of gaming), other gaming venues such as casinos and state-sponsored lotteries, including the Pennsylvania, New Jersey, Delaware and West Virginia lotteries. We also may face competition in the future from new OTWs or from new racetracks. From time to time, states consider legislation to permit other forms of gaming. If additional gaming opportunities become available near our racing and pari-mutuel operations, such gaming opportunities could have a material adverse effect on our business, financial condition and results of operations.

Our OTWs compete with the OTWs of other Pennsylvania racetracks, and new OTWs may compete with our existing wagering facilities. Our competitors have a number of OTW facilities that are near our OTWs. Although only two competing OTWs remain authorized by law for future opening, the opening of a new OTW in close proximity to our existing or future OTWs could have a material adverse effect on our business, financial condition and results of operations.

We are or may become involved in legal proceedings that, if adversely adjudicated or settled, could impact our financial condition.

On August 20, 2001, Showboat Development Company brought a lawsuit against us and certain other parties related to the Charles Town Entertainment Complex. The suit alleges, among other things, that our operation of coin-out video lottery terminals at the Charles Town facility constitutes the operation of a casino, thereby triggering Showboat's option to manage the casino. The suit also alleges that our March 2000 acquisition of the 11% minority interest in Charles Town Races from BDC Group, our former joint venture partner, was made in violation of a right of first refusal that Showboat holds from BDC covering the sale of any interest in any casino at Charles Town Races. We filed in federal district court in Nevada a motion to dismiss this action for lack of personal jurisdiction which was granted on January 25, 2002. On February 13, 2002, Showboat filed a lawsuit in the United States District Court for the Eastern District of Pennsylvania. The substance of the lawsuit was substantially similar to Showboat's previous claim filed in Nevada. On March 28, 2002, Penn National and Showboat agreed to settle all litigation related to this matter. Under the settlement, we agreed to make a one-time payment of $1.0 million to Showboat, which was recognized in our operating results for the fourth quarter of 2001.

In July 2001, a lawsuit was filed against us by certain surveillance employees at the Charles Town facility claiming that our surveillance of those employees during working hours was improper. The lawsuit claims damages of $7.0 million and punitive damages of $15.0 million. We currently are conducting discovery in the case but, at this time, believe that all of the claims of the employees are without merit. On February 12, 2002, we filed a motion for summary judgment that is pending before the court. We intend to vigorously defend ourselves against this action and do not believe that this action will have a material adverse effect on our financial condition or results of operations.

In January 2002, an employee at our Charles Town facility initiated a suit against us alleging invasion of privacy. The employee claims in the suit that she was subjected to an involuntary strip search by other Charles Town employees as part of a theft investigation and is seeking punitive damages. The lawsuit claims damages of $0.5 million and punitive damages of $3.5 million. We believe we have meritorious defenses and intend to vigorously defend ourselves against this suit.

We also are parties to certain other litigation but do not believe it will have a material adverse effect on our financial condition or results of operations if any of these legal proceedings were adversely adjudicated or settled. Furthermore, the nature of our business subjects us to the risk of lawsuits filed by customers and others in the ordinary course. In general, litigation can be expensive and time consuming to defend and could result in settlements or damages that could significantly impact results of operations or financial condition.

We face extensive regulation from gaming authorities.

Licensing Requirements. As owners and operators of gaming and pari-mutuel betting facilities, we are subject to extensive state, local and, in Canada, provincial regulation. State, local and provincial authorities require us and our subsidiaries to demonstrate suitability to obtain and retain various licenses and require that we have registrations, permits and approvals to conduct gaming operations. Various regulatory authorities, including the Louisiana Gaming Control Board, the Mississippi Gaming Commission, the New Jersey Casino Control Commission, the New Jersey Racing Commission, the Alcohol and Gaming Commission of Ontario, the Pennsylvania State Horse Racing Commission, the Pennsylvania State Harness Racing Commission, the West Virginia Racing Commission and the West Virginia Lottery Commission may, for any reason set forth in the applicable legislation, limit, condition, suspend or revoke a license or registration to conduct gaming operations or prevent us from owning the securities of any of our gaming subsidiaries. Like all gaming operators in the jurisdictions in which we operate, we must periodically apply to renew our gaming licenses or registrations. We cannot assure you that we will be able to obtain such renewals. Regulatory authorities may also levy substantial fines against or seize the assets of our company, our

subsidiaries or the people involved in violating gaming laws or regulations. Any of these events could have a material adverse effect on our business, financial condition and results of operations.

We have demonstrated suitability to obtain and have obtained all governmental licenses, registrations, permits and approvals necessary for us to operate our existing gaming facilities. We cannot assure you that we will be able to retain them or demonstrate suitability to obtain any new licenses, registrations, permits or approvals, including those required for us to consummate the Bullwhackers acquisition. If we expand our gaming operations in West Virginia, Mississippi, Louisiana, Pennsylvania, New Jersey, Canada or to new areas, we will have to meet suitability requirements and obtain additional licenses, registrations, permits and approvals from gaming authorities in these jurisdictions. The approval process can be time-consuming and costly and we cannot be sure that we will be successful.

Gaming authorities in the United States generally can require that any beneficial owner of our securities, including holders of our common stock file an application for a finding of suitability. If a gaming authority requires a record or beneficial owner of our common stock to file a suitability application, the owner must apply for a finding of suitability within 30 days or at an earlier time prescribed by the gaming authority. The gaming authority has the power to investigate an owner's suitability and the owner must pay all costs of the investigation. If the owner is found unsuitable, then the owner may be required by law to dispose of our common stock.

Potential Changes in Regulatory Environment. From time to time, legislators and special interest groups have proposed legislation that would expand, restrict or prevent gaming operations in the jurisdictions in which we operate. Any expansion of gaming or restriction on or prohibition of our gaming operations could have a material adverse effect on our operating results.

Taxation. State, provincial and local authorities raise a significant amount of revenue through taxes and fees on gaming activities. We believe that the prospect of significant revenue is one of the primary reasons that jurisdictions permit legalized gaming. As a result, gaming companies are typically subject to significant taxes and fees in addition to normal federal, state, local and provincial income taxes, and such taxes and fees are subject to increase at any time. We pay substantial taxes and fees with respect to our operations. From time to time, federal, state, local and provincial legislators and officials have proposed changes in tax laws, or in the administration of such laws, affecting the gaming industry. In addition, worsening economic conditions could intensify the efforts of state and local governments to raise revenues through increases in gaming taxes. It is not possible to determine with certainty the likelihood of changes in tax laws or in the administration of such laws. Such changes, if

adopted, could have a material adverse effect on our business, financial condition and results of operations.

Compliance with Other Laws. We are also subject to a variety of other rules and regulations, including zoning, environmental, construction and land-use laws and regulations governing the serving of alcoholic beverages.

We depend on our key personnel.

We are highly dependent on the services of Peter M. Carlino, our Chairman and Chief Executive Officer, and other members of our senior management team. We have entered into employment agreements with Mr. Carlino and certain other officers. However, the loss of the services of any of these individuals could have a material adverse effect on our business, financial condition and results of operations.

Inclement weather and other conditions could seriously disrupt our operations.

The operations of our facilities are subject to disruptions or reduced patronage as a result of severe weather conditions. Our dockside facilities in Mississippi and Louisiana are subject to risks in addition to those associated with land-based casinos, including loss of service due to casualty, mechanical failure, extended or extraordinary maintenance, flood, hurricane or other severe weather conditions. Reduced patronage and the loss of a dockside casino or riverboat from service for any period of time due to severe weather could adversely affect our business, financial condition and results of operations.

We depend on agreements with our horsemen and pari-mutuel clerks to operate our business.

The Federal Horseracing Act, the West Virginia Racing Act and the Pennsylvania Racing Act require that, in order to simulcast races, we have written agreements with the horse owners and trainers at our West Virginia and Pennsylvania race tracks. In addition, in order to operate gaming machines in West Virginia, we are required to enter into written agreements regarding the proceeds of the gaming machines with a representative of a majority of the horse owners and trainers, a representative of a majority of the pari-mutuel clerks and a representative of a majority of the horse breeders. On March 23, 1999, we signed a new horsemen agreement with the Pennsylvania Thoroughbred Horsemen at Penn National Race Course with an initial term that expires on January 1, 2004. Our agreement with the Pennsylvania Harness Horsemen was entered into in November 1999 and expires on January 16, 2003. At the Charles Town Entertainment Complex, we have an agreement with the Charles Town Horsemen that expires on December 31, 2002. Our agreement with the pari-mutuel clerks at Charles Town expires on December 31, 2004.

If we fail to maintain operative agreements with the horsemen at a track, we will not be permitted to conduct live racing and export and import simulcasting at that track and OTWs, and, in West Virginia, we will not be permitted to operate our gaming machines. In addition, our simulcasting agreements are subject to the horsemen's approval. In February 1999, the Pennsylvania Thoroughbred Horsemen stopped racing at Penn National Race Course and withdrew their permission for us to import simulcast races from other racetracks, resulting in the closure of Penn National Race Course and its six OTWs. As a result of this action, our operations at Penn National Race Course and its OTWs were suspended for more than five weeks, we lost 46 race days at Penn National Race Course, and it took nearly six months from the beginning of the action before we returned to pre-action levels of racing and operations. If we fail to renew or modify existing agreements on satisfactory terms, this failure could have a material adverse effect on our business, financial condition and results of operations.

In addition, pursuant to the New Jersey Simulcasting Racing Act, our New Jersey joint venture, Pennwood Racing, Inc., must maintain written agreements with the horsemen at Freehold Raceway in order to simulcast races to the Atlantic City casinos. Horsemen agreements currently are in effect at Freehold Raceway.

ITEM 2. PROPERTIES

The following describes our principal real estate properties:

Charles Town Entertainment Complex. We own a 250-acre parcel in Charles Town, West Virginia, a portion of which contains the Charles Town Entertainment Complex. The property also includes a $^{3}/_{4}$-mile thoroughbred racetrack and an enclosed grandstand/clubhouse. We have a right of first refusal for an additional 250 acres that are adjacent to the facility.

Casino Magic Bay St. Louis. We own approximately 591 acres in the city of Bay St. Louis, Mississippi, including the 17-acre marina where the gaming barge is moored. The property includes an 18-hole golf course, a hotel, and other land-based facilities, all of which we own.

Boomtown Biloxi. We lease substantially all of the 19 acres on which Boomtown Biloxi is located under a 99-year lease that began in 1994. The lease stipulates base rent based on gaming revenue with a minimum of $500,000 and a maximum of $2 million annually, plus 5% of gaming revenues in excess of $25 million but less than $50 million. If gaming revenue exceeds $50 million dollars, the percentage rent increases to 11% of all gaming revenue over $50 million. For the year ended December 31, 2001, rental payments totaled $3.6 million. In addition, we lease property for parking under several lease agreements ranging from 10 to 25 years. We also lease approximately 5.1 acres of submerged tidelands at the casino site from the State of Mississippi under a ten-year lease with a five-year option to renew. We own the barge on which the casino is located and all of the land-based facilities.

Casino Rouge. LCCI owns five acres of a 23-acre site on the east bank of the Mississippi River in the East Baton Rouge Downtown Development District less than one-quarter mile from the state capital complex. The remaining 18 acres of the site are currently leased. The property site serves as the dockside embarkation for the Casino Rouge and features a two-story, 58,000 square foot building. The Casino Rouge is a four-story 47,000 square foot riverboat casino.

Casino Rama. Under the Development and Operating Agreement among the Ontario Lottery and Gaming Corporation, the Mnjikaning First Nation, CRC, CHC Casinos and certain other parties, CHC Casinos operates Casino Rama on behalf of the Ontario Lottery and Gaming Corporation. CRC and its wholly owned subsidiary, CHC Casinos, the operator of Casino Rama, do not own any of the land located at or near the casino. In addition, Casino Rama's facilities and equipment are owned by the Ontario Lottery and Gaming Corporation. The Ontario Lottery and Gaming Corporation has a long-term ground lease with an affiliate of the Mnjikaning First Nation, for the land on which Casino Rama is situated. Under the Development and the Operating Agreement, CHC Casinos has been granted a license coupled with an interest in land pursuant to which it, as the operator, has been granted full access to Casino Rama during the term of the Development and Operating Agreement to perform its services under the Agreement.

Penn National Race Course. We own approximately 225 acres in Grantville, Pennsylvania where the Penn National Race Course is located. The property includes a one mile all-weather thoroughbred racetrack and a $^{7}/_{8}$-mile turf track. The property also includes approximately 400 acres surrounding the Penn National Race course that are available for future expansion or development.

Pocono Downs. We own approximately 400 acres in Plains Township, outside of Wilkes-Barre, Pennsylvania where Pocono Downs is located. The property includes a $^{5}/_{8}$-mile all weather, lighted

harness track, a grandstand and a clubhouse. A two-story 14,000 square foot building that houses the Pocono Downs office is also located on the property.

Freehold Raceway. Through our joint venture, we own a 51-acre site in Freehold in Western Monmouth County, New Jersey where Freehold Raceway in located. The property features a half-mile oval harness track and a 150,000 square foot grandstand.

OTWs. We own four of our existing OTW facilities and lease the remaining seven facilities.

Other. We lease 7,362 square feet of office space in an office building in Wyomissing, Pennsylvania for our executive offices. The office building is owned by an affiliate of Peter M. Carlino, our Chairman and Chief Executive Officer. We also lease an aircraft from a company owned by one of our directors. We believe that the lease terms for both the executive office and aircraft are not less favorable than such lease terms that could have been obtained from unaffiliated third parties.

ITEM 3. LEGAL PROCEEDINGS

On August 20, 2001, Showboat Development Company brought a lawsuit against us and certain other parties related to the Charles Town Entertainment Complex. The suit alleges, among other things, that our operation of coin-out video lottery terminals at the Charles Town facility constitutes the operation of a casino, thereby triggering Showboat's option to manage the casino. The suit also alleges that our March 2000 acquisition of the 11% minority interest in Charles Town Races from BDC Group, our former joint venture partner, was made in violation of a right of first refusal that Showboat holds from BDC covering the sale of any interest in any casino at Charles Town Races. We have filed in federal district court in Nevada a motion to dismiss this action for lack of personal jurisdiction and, in the alternative, a motion to transfer the case to the state of West Virginia. On January 25, 2002, the district court granted our motion to dismiss. On February 13, 2002, Showboat filed a lawsuit in the United States District Court for the Eastern District of Pennsylvania. The substance of the lawsuit was substantially similar to Showboat's previous claim filed in Nevada. On March 28, 2002, Penn National and Showboat agreed to settle all litigation related to this matter. Under the settlement, we agreed to make a one-time payment of $1.0 million to Showboat, which was recognized in general and administrative expenses in our operating results for the fourth quarter of 2001.

In July 2001, a lawsuit was filed against us in the Circuit Court of Jefferson County, West Virginia, by certain surveillance employees at the Charles Town facility claiming that our surveillance of those employees during working hours was improper. The lawsuit claims damages of $7.0 million and punitive damages of $15.0 million. We currently are conducting discovery in the case but, at this time, believe that all of the claims of the employees are without merit. On February 12, 2002, we filed a motion for summary judgment that is pending before the court. We intend to vigorously defend ourselves against this action and do not believe that this action will have a material adverse effect on our financial condition or results of operations.

In January 2002, an employee at our Charles Town facility filed a suit against us in the Circuit Court of Jefferson County, West Virginia, alleging invasion of privacy. The employee claims in the suit that she was subjected to an involuntary strip search by other Charles Town employees as part of a theft investigation and is seeking punitive damages. The lawsuit claims damages of $0.5 million and punitive damages of $3.5 million. We believe we have meritorious defenses and intend to vigorously defend ourselves against this suit.

We also are parties to certain other litigation but do not believe it will have a material adverse effect on our financial condition or results of operations if any of these legal proceedings were adversely adjudicated or settled. Furthermore, the nature of our business subjects us to the risk of lawsuits filed by customers and others in the ordinary course. In general, litigation can be expensive

and time consuming to defend and could result in settlements or damages that could significantly impact results of operations or financial condition.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED SHAREHOLDER MATTERS

Our common stock is quoted on The Nasdaq National Market under the symbol "PENN". The following table sets forth for the periods indicated the high and low sales prices per share of our common stock as reported on The Nasdaq National Market.

	High	Low
2000		
First Quarter	$ 11.25	$ 6.81
Second Quarter	15.75	10.38
Third Quarter	15.38	12.50
Fourth Quarter	18.38	8.00
2001		
First Quarter	$ 15.13	$ 9.25
Second Quarter	26.20	10.88
Third Quarter	27.98	12.95
Fourth Quarter	30.65	16.02

The closing sale price per share of common stock on The Nasdaq National Market on March 19, 2002, was $34.13. As of March 19, 2002, there were approximately 521 holders of record of common stock.

Dividend Policy

Since our initial public offering of common stock in May 1994, we have not paid any cash dividends on our common stock. We intend to retain all of our earnings to finance the development of our business, and thus, do not anticipate paying cash dividends on our common stock for the foreseeable future. Payment of any cash dividends in the future will be at the discretion of our Board of Directors and will depend upon, among other things, our future earnings, operations and capital requirements, our general financial condition and general business conditions. Moreover, our existing credit facility prohibits us from authorizing, declaring or paying any dividends until our commitments under the credit facility have been terminated and all amounts outstanding thereunder have been repaid. In addition, future financing arrangements may prohibit the payment of dividends under certain conditions.

ITEM 6. SELECTED CONSOLIDATED FINANCIAL DATA

The following selected consolidated financial and operating data of Penn National Gaming, Inc. for the years ended December 31, 1997, 1998, 1999, 2000 and 2001 are derived from financial statements that have been audited by BDO Seidman, LLP, independent certified public accountants. The selected consolidated financial and operating data should be read in conjunction with the consolidated financial

statements of Penn National and Notes thereto, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the other financial information included herein.

	Year Ended December 31,				
	1997(1)	1998	1999	2000(2)	2001(3)
	(in thousands, except per share data)				
Income statement data:(4)					
Revenue:					
Gaming	$ 5,730	$ 37,665	$ 55,415	$ 159,589	$ 366,166
Racing	98,402	106,850	102,827	113,230	112,243
Management service fee	—	—	—	—	8,297
Other	7,404	9,550	12,118	18,982	32,686
Total revenues	111,536	154,065	170,360	291,801	519,392
Operating expenses:					
Gaming	4,134	26,544	34,951	94,087	202,198
Racing	65,810	70,303	68,808	77,063	78,509
General and administrative	25,965	29,250	37,763	56,755	127,121
Other	5,623	8,080	11,173	18,776	33,852
Total operating expenses	101,532	134,177	152,695	246,681	441,680
Income from operations	10,004	19,888	17,665	45,120	77,712
Other income (expenses), net	(3,927)	(7,866)	(7,155)	(16,408)	(41,346)
Income before income taxes and extraordinary item	6,077	12,022	10,510	28,712	36,366
Taxes on income	2,308	4,519	3,777	10,137	12,608
Income before extraordinary item	3,769	7,503	6,733	18,575	23,758
Extraordinary item—loss on early extinguishment of debt, net of income taxes of $1,001 in 1997 and $4,615 in 2000	(1,482)	—	—	(6,583)	—
Net income	$ 2,287	$ 7,503	$ 6,733	$ 11,992	$ 23,758

Per share data:					
Basic income per share before extraordinary item	$ 0.25	$ 0.50	$ 0.45	$ 1.24	$ 1.55
Basic net income per share	$ 0.15	$ 0.50	$ 0.45	$ 0.80	$ 1.55
Diluted income per share before extraordinary item	$ 0.24	$ 0.49	$ 0.44	$ 1.20	$ 1.49
Diluted net income per share	$ 0.15	$ 0.49	$ 0.44	$ 0.78	$ 1.49
Weighted shares outstanding—basic	14,925	15,015	14,837	14,968	15,327
Weighted shares outstanding—diluted	15,458	15,374	15,196	15,443	15,918
Other data:					
Net cash provided by operating activities	$ 10,678	$ 11,866	$ 22,461	$ 41,813	$ 85,833
Net cash used in investing activities	(47,620)	(22,333)	(29,756)	(229,770)	(216,335)
Net cash provided by (used in) financing activities	53,162	(4,561)	9,903	201,810	145,593
Depreciation and amortization	3,771	5,318	7,733	12,039	32,093
Interest expense	4,860	8,804	9,613	20,644	46,097
EBITDA(5)	13,775	25,206	26,496	59,481	112,336
Capital expenditures	29,196	22,333	13,243	27,295	41,511
Balance sheet data:					
Cash and cash equivalents	$ 21,854	$ 6,826	$ 9,434	$ 23,287	$ 38,378
Total assets	158,878	160,798	189,712	439,900	679,377
Total debt	80,336	78,256	91,213	309,299	458,909
Shareholders' equity	53,856	59,036	66,272	79,221	103,265

(1) Reflects operations included since our January 15, 1997 acquisition of a joint venture interest in the Charles Town Entertainment Complex.

(2) Reflects operations included since the August 8, 2000 acquisition of Casino Magic Bay St. Louis casino and Boomtown Biloxi casino.

(3) Reflects operations included since the April 27, 2001 acquisition of all of the gaming assets of CRC Holdings, Inc. and the minority interest in Louisiana Casino Cruises, Inc.

(4) Certain prior year amounts have been reclassified to conform to the current year presentation.

(5) EBITDA consists of income from operations plus depreciation and amortization and earnings from joint venture. EBITDA is presented because we believe it is frequently used by securities analysts, investors and other interested parties in the evaluation of companies in our industry. However, other companies in our industry may calculate EBITDA differently than we do. EBITDA is not a measurement of financial performance under generally accepted accounting principles and should not be considered as an alternative to cash flow from operating activities or as a measure of liquidity or an alternative to net income as an indicator of operating performance or any other measure of performance derived in accordance with generally accepted accounting principles.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Overview

We derive substantially all of our revenues from gaming and pari-mutuel operations. Since September 1997, revenues from our gaming machines at the Charles Town Entertainment Complex have accounted for an increasingly large share of our total revenues. Our pari-mutuel revenues have been derived from wagering on our live races, wagering on import simulcasts at our racetracks and OTWs and through telephone account wagering, and fees from wagering on export simulcasting our races at out-of-state locations. Our other revenues have been derived from admissions, program sales, food and beverage sales, concessions and certain other ancillary activities.

Our acquisitions of Casino Magic Bay St. Louis, Boomtown Biloxi, Casino Rouge and the management contract for Casino Rama will continue to impact our revenue mix between gaming and pari-mutuel revenues on a prospective basis. We expect that in future periods gaming revenue as a percentage of our total revenues will continue to increase as we continue to focus on our gaming operations. For the years ended December 31, 1999, 2000 and 2001, gaming revenue represented approximately 32%, 54% and 71% of our total revenue, respectively.

Recent and Pending Acquisitions

Casino Magic and Boomtown Biloxi

On August 8, 2000, we completed our acquisition of the Casino Magic Bay St. Louis casino and the Boomtown Biloxi casino from Pinnacle Entertainment, Inc. for approximately $201.3 million in cash, including acquisition costs of $6.3 million. The purchase price was funded with a portion of the proceeds from our $350 million senior secured credit facility. As a result of the refinancing and repayment of existing debt, we recorded an $11.2 million pre-tax extraordinary charge, which was included in our results of operations for the year ended December 31, 2000. The results of operations for these properties from the period August 8, 2000 to December 31, 2001 are included in the results of operations discussed below.

Casino Rouge and Casino Rama

On April 27, 2001, we completed our acquisition of Casino Rouge in Baton Rouge, Louisiana and the management contract for Casino Rama in Orillia, Ontario, Canada for approximately $182 million, including the repayment of existing debt of CRC and its subsidiaries. The purchase price of the acquisition was funded by the proceeds of our offering of $11^1/8$% senior subordinated notes due 2008, which was completed in March 2001. The results of operations for these properties for the period April 28, 2001 to December 31, 2001 are included in the results of operations discussed below.

Bullwhackers Casino

In August 2001, we signed an agreement to acquire the operations of Bullwhackers Casino, the adjoining Bullpen Sports Casino and Silver Hawk Saloon and Casino in Black Hawk, Colorado for $6.5 million cash. We expect to close the acquisition in the second quarter of 2002.

Critical Accounting Policies

Financial Reporting Release No. 60, which was recently released by the Securities and Exchange Commission, requires all companies to include a discussion of critical accounting policies or methods used in the preparation of financial statements. Our significant accounting policies are described in Note 1 of the Notes to the Consolidated Financial Statements. The significant accounting policies that

we believe are the most critical to aid in fully understanding our reported financial results include the following:

Revenue recognition

In accordance with common industry practice, our casino revenues are the net of gaming wins less losses. Racing revenues include our share of pari-mutuel wagering on live races after payment of amounts returned as winning wagers, and our share of wagering from import and export simulcasting as well as our share of wagering from our OTW's. The vast majority of wagers for both businesses are in the form of cash and we do not grant credit to our customers to a significant extent. Our receivables consist principally of amounts due from simulcasting of our races to other racetracks and their OTWs. We also have receivables due under our management contract with Casino Rama for management fees and for expenses, primarily salaries and wages, payable in accordance with our contract. Historically, we have not experienced any significant bad debts from uncollected receivables.

Recent Accounting Standards

In June 2001, the Financial Accounting Standards Board finalized FASB Statements No. 141, *Business Combinations (SFAS 141*) and No. 142, *Goodwill and Other Intangibles Assets* (SFAS 142). SFAS 141 requires the use of the purchase method accounting and prohibits the use of pooling-of-interests method of accounting for business combinations initiated after June 30, 2001. SFAS 141 also requires that we recognize acquired intangible assets apart from goodwill if the acquired intangible assets meet certain criteria. SFAS 141 applies to all business combinations initiated after June 30, 2001 and for purchase business combinations completed on or after July 1, 2001. It also requires, upon adoption of SFAS 142, that we reclassify the carrying amounts of intangible assets and goodwill based on certain criteria in SFAS 141.

SFAS 142 requires, among other things, that companies no longer amortize goodwill, but instead test goodwill for impairment at least annually. In addition, SFAS 142 requires that we identify reporting units for the purpose of assessing potential future impairments of goodwill, reassess the useful lives of the other existing recognized intangible assets, and cease amortization of intangible assets with an indefinite useful life. Any intangible asset with an indefinite useful life should be tested for impairment in accordance with the guidance in SFAS 142. SFAS 142 is required to be applied in fiscal years beginning after December 15, 2001 to all goodwill and other intangible assets recognized at that date, regardless of when those assets were initially recognized. SFAS 142 requires us to complete a transitional goodwill impairment test six months from the date of adoption. We are also required to reassess the useful lives of the other intangible assets within the first interim quarter after adoption of SFAS 142.

Our previous business combinations were accounted for using the purchase method. As of December 31, 2001, net carrying amount of goodwill is $160.2 million and other intangible assets (management service contract for Casino Rama) is $24.1 million. Amortization expense for goodwill and other intangible assets for the year ended December 31, 2001 was $3.5 million and $1.7 million, respectively. Currently, we are assessing but have not yet determined how the adoption of SFAS 142 will impact our financial position and results of operations.

In October 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS 144"). This statement addresses financial accounting and reporting for the impairment or disposal of long-lived assets. This statement supersedes SFAS Statement No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of," and the accounting and reporting provisions of APB Opinion No. 30, "Reporting the Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions." This statement also amends ARB No. 51

"Consolidated Financial Statements," to eliminate the exception to consolidation for a subsidiary for which control is likely to be temporary. This statement requires that one accounting model be used for long-lived assets to be disposed of by sale, whether previously held and used or newly acquired. This statement also broadens the presentation of discontinued operations to include more disposal transactions. SFAS 144 is effective for fiscal years beginning after December 15, 2001 and interim periods within those fiscal years. Currently, we are assessing but have not determined how the adoption of SFAS 144 will impact our financial position and results of operations.

Results of Operations

The results of operations by property level for the years ended December 31, 1999, 2000 and 2001 are summarized below (in thousands):

	Revenues			EBITDA(1)		
	1999	2000	2001	1999	2000	2001
Charles Town Entertainment Complex	$ 80,015	$ 135,290	$ 193,612	$ 16,023	$ 35,469	$ 51,252
Casino Magic-Bay St. Louis(2)	—	31,571	87,752	—	6,092	18,658
Boomtown Biloxi(2)	—	24,634	70,370	—	3,460	13,546
Casino Rouge(3)	—	—	61,981	—	—	15,444
Casino Rama Management Contract(3)	—	—	8,297	—	—	7,632
Penn National Race Course and its OTWs	55,609	64,364	59,821	9,065	10,380	7,582
Pocono Downs and its OTWs	36,324	37,573	38,945	8,955	7,791	7,127
New Jersey Joint Venture	—	—	—	1,098	2,322	2,531
Corporate eliminations(4)	(1,588)	(1,631)	(1,386)	—	—	—
Corporate overhead	—	—	—	(5,361)	(6,033)	(9,946)
Corporate overhead CRC Holdings(3)	—	—	—	—	—	(490)
Total before non-recurring charges	170,360	291,801	519,392	29,780	59,481	113,336
Non-recurring charges and expenses	—	—	—	(3,284)	—	(1,000)
Total	**$ 170,360**	**$ 291,801**	**$ 519,392**	**$ 26,496**	**$ 59,481**	**$ 112,336**

(1) EBITDA consists of income from operations plus depreciation and amortization and earnings from joint venture. EBITDA is presented because we believe it is frequently used by securities analysts, investors and other interested parties in the evaluation of companies in our industry. However, other companies in our industry may calculate EBITDA differently than we do. EBITDA is not a measurement of financial performance under generally accepted accounting principles and should not be considered as an alternative to cash flow from operating activities or as a measure of liquidity or an alternative to net income as an indicator of operating performance, or any other measure of performance derived in accordance with generally accepted accounting principles.

(2) Reflects results since the August 8, 2000 acquisition from Pinnacle Entertainment.

(3) Reflects results since April 27, 2001 acquisition of CRC Holdings, Inc., including corporate overhead at CRC's executive office in Miami, Florida.

(4) Primarily reflects intracompany transactions related to import/export simulcasting.

Year Ended December 31, 2001 compared to Year Ended December 31, 2000

Revenues for the year ended December 31, 2001 increased by $227.6 million, or 78.0%, to $519.4 million in 2001 from $291.8 million in 2000. Revenues increased at our Mississippi properties by $101.9 million to $158.1 million in 2001 from $56.2 million in 2000 (which represented revenues from the August 8, 2000 acquisition date through December 31, 2000). The CRC properties, which were

acquired on April 27, 2001, accounted for $70.3 million of the increase. Revenues also increased at the Charles Town Entertainment Complex by $58.3 million, or 43.1%, to $193.6 million in 2001 from $135.3 million in 2000 as a result of an increase in the number of gaming machines from 1,500 to 2,000 in 2001 and a higher percentage in 2001 of coin-out machines compared to video voucher machines. Revenues from the Pennsylvania racetracks and OTWs decreased by approximately $3.2 million due to a Commonwealth of Pennsylvania racing subsidy of $1.6 million received in 2000 but not in 2001 and a decrease in wagering.

Operating expenses for the year ended December 31, 2001 increased by $195.0 million, or 79.0%, to $441.7 million in 2001 from $246.7 million in 2000. Operating expenses increased at our Mississippi properties by $87.9 million to $138.4 million in 2001 from $50.5 million in 2000. The CRC properties also accounted for $54.3 million of the increase. Operating expenses increased at the Charles Town Entertainment Complex by $48.3 million, or 46.5%, to $152.2 million in 2001 from $103.9 million in 2000 due in large part to additional gaming machines in 2001 and a higher percentage of more expensive coin-out machines compared to video voucher machines. Operating expenses at the Pennsylvania racetracks and OTWs increased by $.4 million. Corporate overhead increased by $4.2 million, or 64.6%, to $10.7 million in 2001 from $6.5 million in 2000 primarily due to additional corporate staff needed to support the recent acquisitions.

EBITDA increased by $52.8 million, or 88.7%, to $112.3 million in 2001 from $59.5 million in 2000. EBITDA increased at our Mississippi properties by $22.6 million to $32.2 million in 2001 from $9.6 million in 2000. The CRC properties accounted for $22.6 million of the increase. EBITDA at the Charles Town Entertainment Complex increased by $15.8 million, or 44.5%, to $51.3 million in 2001 from $35.5 million in 2000. The Pennsylvania racetracks and OTWs and New Jersey joint venture EBITDA accounted for a decrease of $3.2 million over last year. Corporate overhead increased by $3.9 million, or 65.0%, to $9.9 million in 2001 from $6.0 million in 2000.

Net interest expense increased $24.3 million in 2001 due primarily to additional borrowings in August 2000 of approximately $200.0 million to finance the Mississippi acquisitions and $200.0 million in April 2001 to finance the CRC acquisition.

Charles Town Entertainment Complex

Total revenues for the year ended December 31, 2001 increased by $58.3 million, or 43.1%, to $193.6 million in 2001 from $135.3 million in 2000. Gaming revenues increased by $55.7 million, or 51.0%, to $165.0 million in 2001 from $109.3 million in 2000, primarily due to expansion of the gaming floor, which was completed in December 2000. As a result of the expansion, we added 500 reel-spinning, coin-out gaming machines, bringing the total average number of machines to approximately 2,000 for the year 2001, compared to approximately 1,500 gaming machines for the year 2000. These additional gaming machines and the continued shift in machine mix to a higher percentage of reel-spinning, coin-out machines, resulted in an increase in average win per machine of $224 for the year ended December 31, 2001 compared to $199 for the year ended December 31, 2000. Racing revenues increased by $1.8 million, or 8.9%, to $22.1 million in 2001 from $20.3 million in 2000. This increase was primarily due to 25 additional racing days and an increase in export wagering by $43.1 million, or 28.2%, to $196.2 million as a result of additional racing days and overall larger per day wagering averages. Other revenue increased by $.8 million, or 14.0%, to $6.5 million in 2001 from $5.7 million in 2000 primarily as a result of higher food and beverage revenues from opening of the Sundance Café in November 2000, and expansion of the concession areas, dining room and the buffet.

Total operating expenses for the year ended December 31, 2001 increased $48.3 million, or 46.5%, to $152.2 million in 2001 from $103.9 million in 2000. The increase was primarily due to an increase in gaming and racing related taxes of $32.5 million attributable to increased gaming and racing revenues and a change in gaming legislation that resulted in higher gaming taxes and a higher net administrative

fee paid to the State of West Virginia. Salaries and wages increased by $5.2 million primarily due to additional staffing associated with increased gaming units, gaming square footage and expanded concession and dining facilities. Total marketing expenses increased $1.9 million in 2001 as a result of additional media advertising and promotional campaigns to increase awareness of the facility. Other expenses increased due to an increase in property insurance premiums and operating costs associated with the expanded capacity of the facility. Depreciation and amortization increased by $4.8 million as a result of higher capital expenditures in 2001. EBITDA for the year ended December 31, 2001 increased by $15.8 million, or 44.5%, to $51.3 million in 2001 from $35.5 million in 2000.

Mississippi Casinos

Operating results in 2000 for Casino Magic Bay St Louis and Boomtown Biloxi only include the period from August 8, 2000 through December 31, 2000. For the year ended December 31, 2001, Casino Magic Bay St. Louis had revenues of $87.8 million consisting mainly of gaming revenue. Operating expenses for Casino Magic totaled $76.5 million consisting of gaming ($44.0 million), other ($6.7 million), general and administrative ($18.4 million), and depreciation and amortization expense ($7.4 million). For the year ended December 31, 2001, Boomtown Biloxi had revenues of $70.4 million consisting mainly of gaming revenue. Operating expenses for Boomtown totaled $61.8 million consisting of gaming ($28.9 million), other ($8.8 million), general and administrative ($19.1 million), and depreciation and amortization expense ($5.0 million). EBITDA for the Mississippi casinos totaled $32.2 million for the period. Our Mississippi casino operations have numerous competitors, many of which have greater name recognition and financial and marketing resources than we do. Competition in the Mississippi gaming markets is significantly more intense than the competition that our gaming operations face in West Virginia or our pari-mutuel operations face in Pennsylvania and New Jersey.

Casino Rouge and Casino Rama

The CRC acquisition was completed on April 27, 2001 and includes the purchase of Casino Rouge in Baton Rouge, Louisiana, and a management contract to operate Casino Rama in Orillia, Canada. For the period from April 28, 2001 to December 31, 2001, Casino Rouge had revenues of $62.0 million consisting mainly of gaming revenues. Operating expenses for Casino Rouge totaled $51.3 million consisting of gaming ($29.4 million), other ($3.4 million), general and administrative ($13.8 million) and depreciation and amortization expense ($4.7 million). For the period from April 28, 2001 to December 31, 2001, management fees from the Casino Rama management contract totaled $8.3 million for which there was $.7 million of direct operating expenses relating to the associated revenues and amortization of $1.7 million related to the management services contract. EBITDA for Casino Rouge and Casino Rama totaled $22.6 million for the same period.

Penn National Race Course and its OTW Facilities

Revenues for the year ended December 31, 2001 decreased by $4.6 million, or 7.1%, to $59.8 million in 2001 from $64.4 million in 2000. Live racing revenue accounted for $1.4 million of the decrease as a result of a decline in attendance, inclement weather and smaller fields in the first five months of 2001. Full card simulcasting accounted for $2.0 million of the $4.6 million decline, again due to lower attendance in 2001. Other racing revenue declined by $1.0 million in 2001 compared to 2000 as a result of a Commonwealth of Pennsylvania racing subsidy received in 2000 but not in 2001. Although the Commonwealth passed a similar subsidy measure in 2001, subsidy payments by the Commonwealth were frozen and were not received.

Operating expenses for the year ended December 31, 2001 decreased by $1.8 million, or 3.2%, to $55.7 million in 2001 from $55.8 million in 2000. Racing-related expenses such as purses, simulcast fees and pari-mutuel taxes declined by $1.6 million, in part due to lower racing revenues. EBITDA for the

year ended December 31, 2001 decreased by $2.8 million, or 26.9%, to $7.6 million in 2001 from $10.4 million in 2000.

Pocono Downs and its OTW Facilities

Revenues for the year ended December 31, 2001 increased by $1.3 million, or 3.4%, to $38.9 million in 2001 from $37.6 million in 2000. Revenues increased approximately $2.3 million due to the opening of a new OTW facility in East Stroudsburg, Pennsylvania, that was in operation for all of 2001 compared to five months in 2000. This increase was offset by a decline of $.6 million as a result of a Commonwealth of Pennsylvania racing subsidy received in 2000 but not in 2001, and a net decline in revenues at the other Pocono Downs OTWs.

Operating expenses for the year ended December 31, 2001 increased by $2.3 million, or 7.2%, to $34.2 million in 2001 from $31.9 million in 2000. Other operating expenses, administrative expense and concessions expenses increased $.9 million to $11.6 million compared to $10.7 million for the same period the previous year due to a full year of operations at the East Stroudsburg OTW. Racing-related expenses, such as purses, simulcast fees and pari-mutuel taxes, increased $1.0 million, in part due to higher racing revenues. For the year ended December 31, 2001 EBITDA decreased by $.7 million to $7.1 million in 2001 from $7.8 million in 2000.

Corporate Overhead Expenses

Corporate overhead expenses increased by $4.2 million, or 64.6%, to $10.7 million in 2001 from $6.5 million in 2000. Salaries and wages, payroll taxes, employee benefits, relocation expenses and office rent increased by $2.0 million due to the addition of new staff at the corporate office to support the Mississippi and CRC acquisitions. Liability insurance increased by $.5 million due to increased limits for general liability, fiduciary and directors and officers liability insurance and increased insurance rates as a result of market conditions. Consulting and professional services increased by $1.0 million due to acquisition-related activities and regulatory expenses. Travel expenses increased by $.4 million as a result of supporting properties in Mississippi, Louisiana and Canada.

New Jersey Joint Venture

We have an investment in Pennwood Racing, Inc., which operates Freehold Raceway in New Jersey and, until May 2001, operated Garden State Park. In May 2001, Garden State Park was sold and the joint venture ceased operating Garden State Park. Our 50% share of net income was $2.5 million in 2001 compared to $2.3 million in 2000 and was recorded as other income on the income statement. The increase in the joint venture's net income is due in part to impairment expenses recorded in December 2000 related to the then-proposed May 2001 closure of Garden State Park and decreased interest expense in 2001, offset by the decrease in operating income in 2001 as a result of the closure of Garden State Park.

Non-recurring Charges and Expenses

Non-recurring charges and expenses for the year ended December 31, 2001 were $1.0 million as a result of the settlement of the Showboat litigation.

Year Ended December 31, 2000 Compared To Year Ended December 31, 1999

Revenues for the year ended December 31, 2000 increased 71.2% or $121.4 million to $291.8 million, from $170.4 for the year ended December 31, 1999. Operating expenses increased 61.6%, or $94.6 million, to $248.2 million in 2000, from $153.6 million in 1999. The increases in revenues and operating expenses were primarily a result of the Casino Magic and Boomtown Biloxi acquisition in August 2000, the change to more reel-spinning, coin-out gaming machines at the Charles

Town Entertainment Complex and the addition of 500 new machines at Charles Town. As a result, income from operations increased 160.5%, or $26.8 million, to $43.5 million in 2000 from $16.7 million in 1999. Total other expense increased 138.7%, or $8.6 million, to $14.8 million in 2000 from $6.2 million in 1999. Net interest expenses increased $9.9 million in 2000 due to additional borrowings of $200 million to finance the Mississippi acquisition. Earnings from the New Jersey joint venture increased by $1.2 million compared to 1999. Taxes on income increased by 168.4% or $6.4 million due to the factors discussed above. Income before extraordinary item was $18.6 million in 2000 compared to net income of $6.7 million in 1999. In 2000, we incurred an extraordinary charge net of taxes of $6.6 million for the early extinguishment of debt; after giving effect to this change, our net income was $12.0 million for the year ended December 31, 2000.

Charles Town Entertainment Complex

Revenues increased at Charles Town by approximately $55.3 million, or 69.1%, to $135.3 million in 2000 from $80.0 million in 1999. Gaming revenue increased by $53.9 million, or 97.3%, to $109.3 million in 2000 from $55.4 million in 1999 due to the addition of 136 new video lottery machines in mid-1999, 565 new reel-spinning, coin-out gaming machines in late-1999 and 452 gaming machines in the OK Corral slots center, which opened on November 25, 2000. The average number of machines in play increased to 1,494 in 2000 from 923 in 1999 and the average win per machine increased to $199 in 2000 from $163 in 1999. Racing revenue increased by $1.0 million, or 5.2%, to $20.3 million in 2000 from $19.3 million in 1999. This increase is due primarily to a change in the schedule from a Wednesday afternoon race program to a Thursday evening race program in 2000 to accommodate export simulcasting. Charles Town began exporting its live race program to tracks across the country on June 5, 1999 and generated export simulcasting revenues of $2.2 million in 2000 compared to $1.0 million in 1999. Operating expenses increased by $36.5 million, or 54.2%, to $103.9 million in 2000 from $67.4 million in 1999. The increase was primarily due to an increase in gaming expenses of $30.1 million, or 86.0%, to $65.1 million in 2000 from $35.0 million in 1999. This increase was mainly due to increased lottery taxes, purses, salaries and wages and administrative expenses related to the increase in gaming revenues. Racing, other and general and administrative expenses increased by $4.1 million, or 13.4%, to $34.7 million in 2000 from $30.6 million in 1999. The increase was due to an increase in direct costs associated with additional wagering on horse racing and gaming machine play, the addition of gaming machines and floor space (new temporary facility for gaming machines and the opening of the OK Corral slot center), export simulcast expenses and expanded concession and dining capability and capacity. Depreciation expense increased by $2.3 million, or 127.8%, to $4.1 million in 2000 from $1.8 million in 1999 due to additional gaming machines and improvements in 2000. EBITDA attributable to Charles Town increased by $19.5 million, or 121.9%, to $35.5 million in 2000 from $16.0 million in 1999.

Mississippi Casinos

The Casino Magic Bay St Louis and Boomtown Biloxi acquisitions were completed on August 8, 2000. For the period August 8 to December 31, 2000, Casino Magic Bay St. Louis had revenues of $31.6 million consisting mainly of gaming revenue. Operating expenses for Casino Magic totaled $27.8 million consisting of gaming ($18.0 million), other ($2.5 million), general and administrative ($5.0 million), and depreciation and amortization expense ($2.3 million). For the period August 8 to December 31, 2000 Boomtown Biloxi had revenues of $24.6 million consisting mainly of gaming revenue. Operating expenses for Boomtown totaled $22.7 million consisting of gaming

($11.0 million), other ($3.2 million), general and administrative ($7.0 million), and depreciation and amortization expense ($1.5 million). EBITDA for the Mississippi casinos totaled $9.6 million for the period. Our Mississippi casino operations have numerous competitors, many of which have greater name recognition and financial and marketing resources than we do. Competition in the Mississippi gaming

markets is significantly more intense than the competition that our gaming operations face in West Virginia or our pari-mutuel operations face in Pennsylvania and New Jersey.

Penn National Race Course and its OTW Facilities

Penn National Race Course had an increase in revenue of approximately $8.8 million, or 15.8%, to $64.4 million in 2000 from $55.6 million in 1999. Pari-mutuel wagering was $386.6 million in 2000 compared to $333.8 million in 1999. The increase in wagering and revenues is attributed to Penn National Race Course running 201 live race days in 2000 compared to 153 live races days in 1999. Penn National only ran 153 live race days in 1999 due to the Horsemen action in the first quarter that resulted in the closure of all of the facilities from February 16 to March 24, 1999. Operating expenses increased by approximately $6.2 million, or 12.5%, to $55.8 million in 2000 from $49.6 million in 1999. The increase was primarily due to an increase in racing expenses of $5.6 million, or 16.0%, to $40.5 million in 2000 from $34.9 million in 1999. This increase was due to the temporary closure of Penn National Race Course and its OTWs in 1999 and a limited live race schedule during a portion of 1999 due to the Horsemen action described above. Adjusting for the Horsemen action in 1999, EBITDA attributable to these properties increased by $1.3 million, or 14.3%, to $10.4 million in 2000 from $9.1 million in 1999.

Pocono Downs and its OTW Facilities

Revenues at Pocono Downs increased by $1.3 million, or 3.6%, to $37.6 million in 2000 from $36.3 million in 1999. Pari-mutuel wagering was $161.6 million in 2000 compared to $160.2 million in 1999. Operating expenses increased by approximately $2.4 million, or 8.1%, to $31.9 million in 2000 from $29.5 million in 1999. The increase was primarily due to an increase in racing expenses of $2.0 million, or 9.9%, to $22.3 million in 2000 from $20.3 million in 1999. The opening of the new OTW facility in East Stroudsburg, Pennsylvania, and the increase in purse expense per the terms of the new Horsemen's contract executed in January 2000 accounted for most of the increase in expenses. EBITDA decreased $1.2 million, or 13.3%, to $7.8 million in 2000 from $9.0 million in 1999.

Corporate Overhead Expenses

Corporate overhead expenses increased by $0.7 million, or 13.2%, to $6.0 million in 2000 from $5.3 million in 1999. Salaries and wages, payroll taxes, and benefits increased by $0.7 million due to new positions created for business development, employee training, and marketing. Expenses also increased for SEC and annual reporting ($73,000), office space ($30,000) and corporate travel for acquisitions and Mississippi operations ($246,000). These increases were partially offset by a decrease in outside services, professional fees and consulting fees in the amount of $0.4 million.

New Jersey Joint Venture

We completed our investment in Pennwood Racing, Inc., the New Jersey joint venture, on July 29, 1999. Pennwood Racing operates Freehold Raceway and Garden State Park. Revenues of the joint venture increased to $61.5 million in 2000 from $28.0 million in 1999 as a result of the operating results in 2000 reflecting a full twelve-month period. Net income was $5.6 million in 2000, before non-recurring charges of $1.0 million relating to the termination of the Garden State lease, compared to $2.2 million in 1999. Our 50% share of net income was $2.3 million, after a non-recurring charge of $0.5 million, in 2000 compared to $1.1 million in 1999.

Non-recurring Charges and Expenses

Non-recurring charges and expenses totaled $3.3 million for the year ended December 31, 1999. In connection with our gaming operations in West Virginia, we recorded litigation expense of $1.5 million

for liquidated damages awarded to Amtote International, Inc. in a wagering services contract dispute. In Tennessee, the Tennessee Supreme Court declined to review the substantive issue of whether pari-mutuel wagering on horse racing is lawful under the existing statute without the Tennessee Racing Commission. As a result of this decision we recorded a charge against earnings of $0.5 million for costs incurred for our Tennessee racing license. In Pennsylvania, we incurred expenses totaling $1.3 million as a result of the Horsemen's action that closed Penn National Race Course and its OTWs from February 16 to March 24, 1999 and resulted in the loss of 46 race days in 1999.

Liquidity and Capital Resources

Historically, our primary sources of liquidity and capital resources have been cash flow from operations, borrowings from banks and proceeds from the issuance of debt and equity securities.

Net cash provided by operating activities was $85.8 million for the year ended December 31, 2001. This consisted of net income ($24.4 million), adjusted for non-cash reconciling items ($36.8 million) and net increases in current liability accounts along with net decreases in current asset accounts ($24.6 million), net of assets and liabilities acquired in the CRC acquisition. Net income, non-cash items and the net change in the balance sheet accounts increased by $12.4 million, $12.3 million and $19.1 million, respectively, in 2001 as compared to 2000.

Cash flows used in investing activities totaled $216.3 million for the year ended December 31, 2001. Expenditures for property, plant, and equipment totaled $41.5 million and included renovations of the buffet restaurant and new hotel construction at Casino Magic Bay St. Louis ($18.0 million), new gaming equipment at Casino Magic ($1.6 million), new gaming equipment and slot system at Boomtown Biloxi ($2.4 million), land and building acquisitions at the Charles Town Entertainment Complex ($1.0 million), the OK Corral slot center at Charles Town ($0.6 million), property additions at Charles Town ($0.3 million), construction of parking garage and expansion at Charles Town ($3.2 million), construction and design of a steak house at Casino Rouge ($1.6 million), other small projects ($1.3 million) and maintenance capital expenditures at our properties ($11.5 million). The CRC acquisition totaled $182.7 million. Cash received from the New Jersey joint venture totaled $2.9 million. Cash in escrow decreased by $4.6 million as a result of the closing of the CRC acquisition on April 27, 2001.

Cash flows from financing activities provided net cash flow of $145.6 million for the year ended December 31, 2001. Aggregate proceeds from the issuance of notes were $200.0 million, a portion of which were used to pay financing costs associated with the issuance ($6.9 million). Principal payments on long-term debt under our existing credit facility, net of additional borrowings on the revolving line of credit, were $50.4 million. Proceeds from the exercise of stock options totaled $2.9 million.

Capital Expenditures

The following table summarizes our planned capital expenditures, other than maintenance capital expenditures, by property level for fiscal years ended December 31, 2002 and 2003:

	Year Ending December 31,	
	2002	2003
	(in thousands)	
Property		
Charles Town Entertainment Complex	$ 41,400	$ 10,000
Casino Magic Bay St. Louis	20,700	—
Boomtown Biloxi	—	4,500
Bullwhackers Casino(1)	9,000	—
Totals	$ 71,100	$ 14,500

(1) Pending acquisition.

Beginning in late 2001 and continuing through the end of 2002, we expect to expend significant amounts on capital expenditures at the Charles Town Entertainment Complex and Casino Magic Bay St. Louis. At Charles Town, we expect to spend an additional $41.4 million in 2002 on capital expenditures that were begun in 2001. Specifically, we expect to complete construction of a structured parking facility, at an estimated additional cost of $10.2 million in 2002, and expand the gaming and entertainment facility at Charles Town, at an estimated cost of $31.2 million in 2002, which includes the purchase of 500 additional gaming machines. In 2003, we expect to expend approximately $10.0 million to purchase and install an additional 1,000 machines at Charles Town. On February 28, 2002, the West Virginia Lottery Commission approved our request to add up to 1,500 additional gaming machines to the 2,000 machines already in place at Charles Town. Depending on future market conditions in the West Virginia gaming market, we will continue to evaluate our plans to build a 300-room hotel at Charles Town.

At Casino Magic, we have begun construction of a 300-room hotel with meeting and conference facilities, three new restaurant venues, renovations to the existing buffet restaurant and certain amenities to the gaming floor. Through December 31, 2001, we spent approximately $18.0 million on these projects. In 2002, we expect to spend an additional $20.7 million to complete these projects.

In January 2002, we signed an option to purchase approximately 4 acres of land adjacent to our Boomtown Biloxi property for $4.0 million. The purchase is contingent upon receiving certain governmental and third-party consents, authorizations, approvals and licenses which we expect could occur in 2003. If successful, we expect to use the land for additional parking for our Boomtown facility. In addition, we expect to make certain property improvements in 2003 at Boomtown at a cost of approximately $0.5 million.

On August 30, 2001, we entered into a definitive agreement to acquire all of the assets of the Bullwhackers Casino operations, in Black Hawk, Colorado, from Colorado Gaming and Entertainment Co., a subsidiary of Hilton Group plc, for $6.5 million in cash. The Bullwhackers assets consist of the Bullwhackers Casino, the adjoining Bullpen Sports Casino, the Silver Hawk Saloon and Casino, an administrative building and a 475-car parking area, all located in Black Hawk, Colorado. The Bullwhackers properties comprise a total of 63,800 square feet of interior space, 20,700 square feet of which is devoted to gaming, consisting of 1,002 slot machines and 16 table games. The properties are located on leased land as well as 3.25 acres of land included in the acquisition, much of which is utilized for parking. We currently expect that the transaction will close in the second quarter of 2002. As of December 31, 2001, we had made a deposit of $500,000 under the terms of the agreement. In the year 2002, we expect to spend $9.0 million for the acquisition, closing costs and improvements to the Bullwhackers Casino.

For 2002 and 2003, we expect to expend approximately between $14.0 million and $16.0 million each year for maintenance capital expenditures at our properties.

We expect to use cash generated from operations and cash available under the revolver portion of our existing senior secured credit facility to fund our anticipated capital expenditure and maintenance capital expenditures in 2002 and 2003. See "—Outlook" below.

Senior Secured Credit Facility

On August 8, 2000, we entered into a $350 million senior secured credit facility with a syndicate of lenders led by Lehman Brothers Inc. and CIBC World Markets Corp. that replaced our then-existing credit facilities. The credit facility is comprised of a $75 million revolving credit facility maturing on August 8, 2005, a $75 million Tranche A term loan maturing on August 8, 2005 and a $200 million Tranche B term loan maturing on August 8, 2006. Up to $10 million of the revolving credit facility may be used for the issuance of standby letters of credit, of which there was $2.6 million outstanding as of December 31, 2001. In addition, up to $10 million of the revolving credit facility also may be used for short-term credit to be provided to us on a same-day basis, which must be repaid within five days.

At our option, the revolving credit facility and the Tranche A term loan may bear interest at (1) the highest of $^1/_2$ of 1% in excess of the federal funds effective rate or the rate that the bank group announces from time to time as its prime lending rate plus an applicable margin of up to 2.25%, or (2) a rate tied to a eurodollar rate plus an applicable margin up to 3.25%, in either case with the applicable rate based on our total leverage. At our option, the Tranche B term loan may bear interest at (1) the highest of $^1/_2$ of 1% in excess of the federal funds effective rate or the rate that the bank group announces from time to time as its prime lending rate plus an applicable margin of up to 3.25%, or (2) a rate tied to a eurodollar rate plus an applicable margin up to 4.00%, in either case with the applicable rate based on our total leverage. The eurodollar rate is defined as the rate that appears on page 3750 of the Dow Jones Telerate Screen as of 11:00 a.m. London time two days before the applicable funding date (adjusted for statutory reserve requirements for eurocurrency liabilities) at

which eurodollar deposits for one, two, three or six months, as selected by us, are offered in the interbank eurodollar market. At December 31, 2001, the weighted average loan rate for the Tranche A and Tranche B loans was 8.4%. In addition, as of December 22, 2000, we entered into a $100.0 million interest rate swap contract obligating us to pay a

fixed rate of 5.825% against a variable interest rate based on the 90-day LIBOR rate, which expires on December 22, 2003. On August 3, 2001, we entered into a $36.0 million interest rate swap contract obligating us to pay a fixed rate of 4.8125% against a variable interest rate based on the 90-day LIBOR rate, which expires on June 30, 2004.

As of December 31, 2001, $61.9 million was outstanding on the Tranche A term loan, $197.0 million was outstanding on the Tranche B term loan and there was no outstanding balance under the revolving credit portion of the facility. Proceeds from the credit facility to date have been used to finance the acquisition of the Mississippi properties, to replace our existing term loan and revolving credit facilities, to complete a tender offer for our 1997 senior notes and for working capital purposes.

11 1/8% Senior Subordinated Notes due 2008

On March 12, 2001, we completed a private offering of $200,000,000 of our 11 1/8% senior subordinated notes due 2008. The net proceeds of the 11 1/8% notes were used, in part, to finance our acquisition of Casino Rouge and the management contract at Casino Rama, including the repayment of certain existing indebtedness at CRC. Interest on the 11 1/8% notes is payable on March 1 and September 1 of each year. The 11 1/8% notes mature on March 1, 2008. As of February 28, 2002, all of the principal amount of the 11 1/8% notes are outstanding.

We may redeem all or part of the 11 1/8% notes on or after March 1, 2005 at certain specified redemption prices. Prior to March 1, 2004, we may redeem up to 35% of the 11 1/8% notes from proceeds of certain sales of our equity securities. The 11 1/8% notes also are subject to redemption requirements imposed by state and local gaming laws and regulations.

The 11 1/8% notes are general unsecured obligations and are guaranteed on a senior subordinated basis by certain of our current and future wholly-owned domestic subsidiaries. The 11 1/8% notes rank equally with our future senior subordinated debt and junior to our senior debt, including debt under our senior credit facility. In addition, the 11 1/8% notes will be effectively junior to any indebtedness of our non-U.S. or unrestricted subsidiaries, none of which have guaranteed the 11 1/8% notes.

The 11 1/8% notes and guarantees were originally issued in a private placement pursuant to an exemption from the registration requirements of the Securities Act of 1933. On July 30, 2001, we completed an offer to exchange the 11 1/8% notes and guarantees for 11 1/8% notes and guarantees registered under the Securities Act having substantially identical terms.

Recent Financing Transactions

—Equity Offering

On February 20, 2002, we completed a public offering of 4,600,000 shares of our common stock at a public offering price of $30.50 per share. Of the common shares sold in the offering, 3,350,000 shares were sold by us and 1,250,000 shares were sold by The Carlino Family Trust, a related party. We have used the net proceeds from the offering, totaling approximately $96.1 million after deducting underwriting discounts and related expenses, to repay term loan indebtedness under the existing senior secured credit facility. We did not receive any proceeds from the offering by The Carlino Family Trust.

—8 7/8% Senior Subordinated Notes due 2010

On February 28, 2002, we completed a public offering of $175,000,000 of our 8 7/8% senior subordinated notes due 2010. Interest on the 8 7/8% notes is payable on March 15 and September 15 of

each year, beginning September 15, 2002. The 8 7/8% notes mature on March 15, 2010. As of February 28, 2002, all of the principal amount of the 8 7/8% notes is outstanding. We have used the net proceeds from the offering, totaling approximately $170.1 million after deducting underwriting discounts and related expenses, to repay term loan indebtedness under the existing senior secured credit facility.

We may redeem all or part of the 8 7/8% notes on or after March 15, 2006 at certain specified redemption prices. Prior to March 15, 2005, we may redeem up to 35% of the 8 7/8% notes from proceeds of certain sales of our equity securities. The 8 7/8% notes also are subject to redemption requirements imposed by state and local gaming laws and regulations.

The 8 7/8% notes are general unsecured obligations and are guaranteed on a senior subordinated basis by certain of our current and future wholly-owned domestic subsidiaries. The 8 7/8% notes rank equally with our future senior subordinated debt, including the 11 1/8% senior subordinated notes, and junior to our senior debt, including debt under our senior credit facility. In addition, the 8 7/8% notes will be effectively junior to any indebtedness of our non-U.S. or unrestricted subsidiaries, none of which have guaranteed the 8 7/8% notes.

Although we repaid the term indebtedness under the existing senior secured credit facility, we did not cancel the related interest rate swap agreements. We continue to maintain these agreements. The changes in the fair values of the interest rate swaps as well as the amortization of the amounts recorded in other comprehensive income will be recognized as components of interest expense subsequent to the payoff of the floating rate debt.

Commitments and Contingencies

—Contractual Cash Obligations

As discussed above, in February 2002 we completed public offerings of common stock and 8 7/8% senior subordinated notes and used the proceeds of those offerings to repay the outstanding term loan indebtedness under the senior secured credit facility. As of March 8, 2002, there was no indebtedness outstanding under the credit facility and there was approximately $71.0 million available for borrowing under the revolving credit portion of the credit facility. The following table reflects these recent offerings and the repayment of the senior secured credit facility as of March 8, 2002.

		Payments Due By Period			
	Total	2002	2003 - 2004	2005 - 2006	
			(in thousands)		
Senior secured credit facility(1)	$ —	$ —	$ —	$ —	$
11 1/8% senior subordinated notes due 2008(2)					
Principal	200,000	—	—	—	

Interest	159,458	22,250	44,500	44,500	
8 7/8% senior subordinated notes due 2010(3)					
Principal	175,000	—	—	—	
Interest	124,248	7,766	31,063	31,063	
Operating leases	11,929	3,530	5,474	1,978	
Bullwhackers Casino purchase agreement	6,500	6,500	—	—	
Total	$ 677,135	$ 40,046	$ 81,037	$ 77,541	$

(1) Subsequent to December 31, 2001, we completed public offerings of common stock and 8 7/8% senior subordinated notes and used the proceeds of those offerings to repay the outstanding term loan indebtedness under the credit facility. As of March 8, 2002, there was no indebtedness

outstanding under the credit facility and there was approximately $71.0 million available for borrowing under the revolving credit portion of the credit facility.

(2) The $200.0 million aggregate principal amount of 11 1/8% notes matures on March 1, 2008. Interest payments of approximately $11.1 million are due on each March 1 and September 1 until March 1, 2008.

(3) The $175.0 million aggregate principal amount of 8 7/8% notes matures on March 15, 2010. Interest payments of approximately $7.8 million are due on each March 15 and September 15 until March 15, 2010.

—Other Commercial Commitments

The following table presents our material commercial commitments as of March 8, 2002 for the following future periods:

		Amount of Commitment Expiration Per Period			
	Total Amounts Committed	2002	2003 - 2004	2005 - 2006	2007 and After
		(in thousands)			
Revolving Credit Facility(1)	$ 70,600	$ —	$ —	$ 70,600	$ —
Letters of Credit(1)	4,400	4,400	—	—	—
Guarantees of New Jersey Joint Venture Obligations(2)	10,400	767	9,633	—	—
Total	$ 85,400	$ 5,167	$ 9,633	$ 70,600	$ —

(1) The available balance under the revolving portion of the $75.0 senior secured credit facility is diminished by outstanding letters of credit.

(2) In connection with our 50% ownership interest in Pennwood Racing, our joint venture in New Jersey, we have entered into a debt service maintenance agreement with Pennwood's lender to guarantee up to 50% of Pennwood's $23.0 million term loan. Our obligation as of March 8, 2002 under this guarantee is approximately $10.4 million.

—Litigation

On August 20, 2001, Showboat Development Company brought a lawsuit against us and certain other parties related to the Charles Town Entertainment Complex. The suit alleges, among other things, that our operation of coin-out video lottery terminals at the Charles Town facility constitutes the operation of a casino, thereby triggering Showboat's option to manage the casino. The suit also alleges that our March 2000 acquisition of the 11% minority interest in Charles Town Races from BDC Group, our former joint venture partner, was made in violation of a right of first refusal that Showboat holds from BDC covering the sale of any interest in any casino at Charles Town Races. We filed in federal district court in Nevada a motion to dismiss this action for lack of personal jurisdiction and, in the alternative, a motion to transfer the case to the state of West Virginia. On January 25, 2002, the district court granted our motion to dismiss. On February 13, 2002, Showboat filed a lawsuit in the United States District Court for the Eastern District of Pennsylvania. The substance of the lawsuit was substantially similar to Showboat's previous claim filed in Nevada. On March 28, 2002, Penn National and Showboat agreed to settle all litigation related to this matter. Under the settlement, we agreed to make a one-time payment of $1 million to Showboat, which was recognized in general and administrative expenses in our operating results for the fourth quarter of 2001.

In July 2001, a lawsuit was filed against us by certain surveillance employees at the Charles Town facility claiming that our surveillance of those employees during working hours was improper. The

lawsuit claims damages of $7.0 million and punitive damages of $15.0 million. We currently are conducting discovery in the case but, at this time, believe that all of the claims of the employees are without merit. On February 12, 2002, we filed a motion for summary judgment that is pending before the court. We intend to vigorously defend ourselves against this action and do not believe that this action will have a material adverse effect on our financial condition or results of operations.

In January 2002, an employee at our Charles Town facility initiated a suit against us alleging invasion of privacy. The employee claims in the suit that she was subjected to an involuntary strip search by other Charles Town employees as part of a theft investigation and is seeking punitive damages. The lawsuit claims damages of $0.5 million and punitive damages of $3.5 million. We believe we have meritorious defenses and intend to vigorously defend ourselves against this suit.

We also are parties to certain other litigation but do not believe it will have a material adverse effect on our financial condition or results of operations if any of these legal proceedings were adversely adjudicated or settled. Furthermore, the nature of our business subjects us to the risk of lawsuits filed by customers and others.

—Interest Rate Swap Agreements

See "Quantitative and Qualitative Disclosures About Market Risk" below.

Outlook

Based on our current level of operations, and anticipated revenue growth, we believe that cash generated from operations and amounts available under our credit facility will be adequate to meet our anticipated debt service requirements, capital expenditures and working capital needs for the foreseeable future. We cannot assure you, however, that our business will generate sufficient cash flow from operations, that our anticipated revenue growth will be realized, or that future borrowings will be available under our credit facility or otherwise will be available to enable us to service our indebtedness, including the credit facility and the notes, to retire or redeem the notes when required or to make anticipated capital expenditures. In addition, if we consummate significant acquisitions in the future, our cash requirements may increase significantly. We may need to refinance all or a portion of our debt on or before maturity. Our future operating performance and our ability to service or refinance our debt will be subject to future economic conditions and to financial, business and other factors, many of which are beyond our control.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We currently use interest rate swaps to assist in managing interest incurred on our long-term debt. The difference between amounts received and amounts paid under such agreements, as well as any costs or fees, is recorded as a reduction of, or addition to, interest expense as incurred over the life of the swap or similar financial instrument. On December 20, 2000, we entered into a forward interest rate swap with a notional amount of $100 million, which has an effective date of December 22, 2000 and a termination date of December 22, 2003. Under this agreement, we pay a fixed rate of 5.835% against a variable interest rate based on the 90-day LIBOR rate. On August 3, 2001, we entered into a forward interest rate swap with a notional amount of $36 million, which has an effective date of August 7, 2001 and a termination date of June 30, 2004. Under this agreement, we pay a fixed rate of 4.8125% against a variable interest rate based on the 90-day LIBOR rate. At December 31, 2001, the 90-day LIBOR rate was 1.92%. We entered into these interest rate swap agreements to reduce the impact of future variable interest payments related to our senior secured credit facility. We account for the interest rate swap agreements as cash flow hedges. The changes in the fair values of the interest rate swaps are recorded as adjustments to accrued interest in the accompanying consolidated balance sheet with the offset recorded in accumulated other comprehensive loss, which as of December 31,

2001 amounted to $3.8 million, net of an income tax benefit of $2.0 million. Any hedge ineffectiveness was not material for the year ended December 31, 2001. Amounts recorded in accumulated other comprehensive income will be amortized as an adjustment to interest expense over the term of the related derivative. We estimate $1.8 million of net derivative losses included in other comprehensive income will be reclassified into interest expense within the next twelve months.

The interest rate swap agreements hedge a portion of our exposure on our outstanding floating rate obligations, which were $258.9 million at December 31, 2001. For the year ended December 31, 2001, we increased interest expense by approximately $1.7 million as a result of the interest rate swap agreements. We are exposed to credit loss in the event of nonperformance by our counter parties to the interest rate swap agreements. We do not anticipate nonperformance by these financial institutions, and no material loss would be expected from the nonperformance of these financial institutions.

Although we repaid the term indebtedness under the existing senior secured credit facility, we did not cancel the related interest rate swap agreements. We continue to maintain these agreements. The changes in the fair values of the interest rate swaps as well as the amortization of the amounts recorded in other comprehensive income will be recognized as components of interest expense subsequent to the payoff of the floating rate debt.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

Report of Independent Certified Public Accountants

Penn National Gaming, Inc. and subsidiaries
Wyomissing, Pennsylvania

We have audited the accompanying consolidated balance sheets of Penn National Gaming, Inc. and subsidiaries as of December 31, 2000 and 2001, and the related consolidated statements of income, shareholders' equity, and cash flows for each of the three years in the period ended December 31, 2001. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall consolidated financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Penn National Gaming, Inc. and subsidiaries at December 31, 2000 and 2001, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2001 in conformity with accounting principles generally accepted in the United States of America.

/s/ BDO SEIDMAN, LLP

BDO Seidman, LLP

Philadelphia, Pennsylvania
January 25, 2002, except for Note 12,
which is as of March 28, 2002.

Consolidated Balance Sheets

	December 31,	
	2000	2001
	(In thousands, except per share data)	
Assets		
Current assets		
Cash and cash equivalents	$ 23,287	$ 38,378
Receivables	10,341	19,367
Prepaid expenses and other current assets	5,312	7,751
Prepaid income taxes	1,905	—
Deferred income taxes	—	4,610
Total current assets	40,845	70,106
Property, plant and equipment, at cost		
Land and improvements	81,177	82,981
Building and improvements	142,753	226,478
Furniture, fixtures and equipment	79,606	104,215
Transportation equipment	1,015	1,175
Leasehold improvements	11,704	11,795
Construction in progress	3,643	21,338
	319,898	447,982
Less accumulated depreciation and amortization	31,582	58,063
	288,316	389,919
Other assets		
Investment in and advances to unconsolidated affiliates	14,584	14,187
Cash in escrow	5,107	500
Excess of cost over fair market value of net assets acquired net of accumulated amortization of $3,858 and $7,371, respectively	78,161	160,210
Management service contract (net of accumulated amortization of $1,695)	—	24,050
Deferred financing costs, net	9,585	14,090
Miscellaneous	3,302	6,315
Total other assets	110,739	219,352
	$ 439,900	$ 679,377
Liabilities and Shareholders' Equity		
Current liabilities		
Current maturities of long-term debt	$ 11,390	$ 15,141
Accounts payable	18,436	18,975
Accrued expenses	6,913	19,623
Accrued interest	1,289	14,263
Accrued salaries and wages	3,957	13,533
Taxes, other than income taxes	2,816	5,272
Income taxes	—	180
Other current liabilities	4,489	5,108
Total current liabilities	49,290	92,095
Long-term liabilities		
Long-term debt, net of current maturities	297,909	443,768
Deferred income taxes	13,480	40,249
Total long-term liabilities	311,389	484,017
Commitments and contingencies		
Shareholders' equity		
Preferred stock, $.01 par value, authorized 1,000,000 shares; no shares issued	—	—
Common stock, $.01 par value, authorized 200,000,000 shares; shares issued 15,459,175 and 15,933,425, respectively	155	160
Treasury stock, at cost 424,700 shares	(2,379)	(2,379)
Additional paid-in capital	39,482	43,605
Retained earnings	41,963	65,721
Accumulated other comprehensive loss	—	(3,842)
Total shareholders' equity	79,221	103,265
	$ 439,900	$ 679,377

See accompanying notes to consolidated financial statements

Consolidated Statements of Shareholders' Equity

	Year ended December 31,		
	1999	2000	2001
	(In thousands, except per share data)		
Revenues			
Gaming	$ 55,415	$ 159,589	$ 366,166
Racing	102,827	113,230	112,243
Management service fee	—	—	8,297
Other revenue	12,118	18,982	32,686
Total revenues	170,360	291,801	519,392
Operating expenses			
Gaming	34,951	94,087	202,198
Racing	68,808	77,063	78,509
Other	11,173	18,776	33,852
General and administrative	30,030	44,716	95,028
Depreciation and amortization	7,733	12,039	32,093
Total operating expenses	152,695	246,681	441,680
Income from operations	17,665	45,120	77,712
Other income (expense)			
Interest expense	(9,613)	(20,644)	(46,097)
Interest income	1,368	1,875	3,016
Earnings from joint venture	1,098	2,322	2,531
Other	(8)	39	(796)
Total other expense	(7,155)	(16,408)	(41,346)
Income before income taxes and extraordinary item	10,510	28,712	36,366
Taxes on income	3,777	10,137	12,608
Income before extraordinary item	6,733	18,575	23,758
Extraordinary item, loss on early extinguishment of debt, net of income taxes of $4,615	—	(6,583)	—
Net income	$ 6,733	$ 11,992	$ 23,758
Per share data			
Basic			
Income before extraordinary item	$ .45	$ 1.24	$ 1.55
Extraordinary item	—	(.44)	—
Net income	$ .45	$ .80	$ 1.55
Diluted			
Income before extraordinary item	$ .44	$ 1.20	$ 1.49
Extraordinary item	—	(.42)	—
Net income	$ .44	$ .78	$ 1.49
Weighted shares outstanding			
Basic	14,837	14,968	15,327
Diluted	15,196	15,443	15,918

See accompanying notes to consolidated financial statements

Penn National Gaming, Inc. and Subsidiaries

Consolidated Statements of Shareholders' Equity and Comprehensive Income

	Common Stock							
	Shares	Amount	Treasury Stock	Additional Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Total	Comprehensive Income
	(In thousands, except share data)							
Balance, December 31, 1998	15,164,080	$ 152	$ (2,379)	$ 38,025	$ 23,238	$ —	$ 59,036	$ —
Exercise of stock options and warrants	150,095	1	—	502	—	—	503	—

Net income for the year	—	—	—	—	6,733	—	6,733	—
Balance, December 31, 1999	15,314,175	153	(2,379)	38,527	29,971	—	66,272	—
Exercise of stock options including tax benefit of $265	145,000	2	—	955	—	—	957	—
Net income for the year	—	—	—	—	11,992	—	11,992	—
Balance, December 31, 2000	15,459,175	155	(2,379)	39,482	41,963	—	79,221	—
Exercise of stock options including tax benefit of $1,196	474,250	5	—	4,123	—	—	4,128	—
Fair market value of swap agreement, net of income tax benefit of $2,043	—	—	—	—	—	(3,794)	(3,794)	(3,794)
Foreign currency translation adjustment	—	—	—	—	—	(48)	(48)	(48)
Net income for the year		—	—	—	23,758	—	23,758	23,758
Balance, December 31, 2001	15,933,425	$ 160	$ (2,379)	$ 43,605	$ 65,721	$ (3,842)	$ 103,265	$ 19,916

See accompanying notes to consolidated financial statements

Penn National Gaming, Inc. and Subsidiaries
Consolidated Statements of Cash Flows

	Year ended December 31,		
	1999	2000	2001
	(In thousands)		
Cash flows from operating activities			
Net income	$ 6,733	$ 11,992	$ 23,758
Adjustments to reconcile net income to net cash provided by operating activities			
Depreciation and amortization	7,733	12,039	32,093
Amortization of deferred financing costs charged to interest expense	946	1,555	2,444
Loss on sale of fixed assets	—	—	809
Earnings from joint venture	(1,098)	(2,322)	(2,531)
Extraordinary loss on early extinguishment of debt, before income tax benefit	—	11,198	—
Deferred income taxes	910	3,278	6,959
Tax benefit from stock options exercised	—	265	1,196
Decrease (increase), net of business acquired, in			
Receivables	(939)	(5,562)	2,226
Prepaid expenses and other current assets	338	(3,663)	(546)
Prepaid income taxes	(229)	(817)	1,905
Miscellaneous other assets	(202)	(2,025)	(1,149)
Increase (decrease), net of business acquired, in			
Accounts payable	3,993	8,226	(2,473)
Accrued expenses	1,744	2,385	(4,663)
Accrued interest	(35)	856	12,974
Accrued salaries and wages	346	2,859	9,576
Taxes, other than income taxes	988	1,325	2,456
Income taxes payable	—	—	180
Other current liabilities	1,233	224	619
Net cash provided by operating activities	22,461	41,813	85,833
Cash flows from investing activities			
Expenditures for property, plant and equipment	(13,243)	(27,295)	(41,511)
Proceeds from sale of property and equipment		151	299
(Investment in and advances to) and distributions from joint venture	(11,764)	511	2,928
Acquisition of businesses, net of cash acquired	251	(203,030)	(182,658)
(Increase) decrease in cash in escrow	(5,000)	(107)	4,607
Net cash used in investing activities	(29,756)	(229,770)	(216,335)

Cash flows from financing activities			
Proceeds from exercise of options and warrants	503	692	2,932
Proceeds from long-term debt	24,350	323,395	211,000
Principal payments on long-term debt	(11,393)	(105,185)	(61,389)
Increase in unamortized financing cost	(3,557)	(10,407)	(6,950)
Payment of tender fees on senior notes	—	(6,685)	—
Net cash provided by financing activities	9,903	201,810	145,593
Net increase in cash and cash equivalents	2,608	13,853	15,091
Cash and cash equivalents at beginning of year	6,826	9,434	23,287
Cash and cash equivalents at end of year	$ 9,434	$ 23,287	$ 38,378

See accompanying notes to consolidated financial statements

Penn National Gaming, Inc. and Subsidiaries

Notes to Consolidated Financial Statements

1. Summary of Significant Accounting Policies

Business

Penn National Gaming, Inc. (the "Company") owns and operates the Charles Town Entertainment Complex in Charles Town, West Virginia, which features gaming machines and live thoroughbred racing; two Mississippi casinos: the Casino Magic Bay St. Louis casino, hotel, golf resort and marina in Bay St. Louis, and the Boomtown Biloxi casino in Biloxi; Louisiana Casino Cruises, Inc. ("LCCI") which owns and operates the Casino Rouge, a riverboat gaming facility in Baton Rouge, Louisiana; CRC Holdings, Inc. ("CRC") which has a management contract for the operation of Casino Rama, a casino located approximately ninety miles north of Toronto, Canada on the Chippewas of Mnjikaning First Nation land and two racetracks and eleven off-track wagering (OTW) facilities located in Pennsylvania. The Company also owns a 50% interest in Pennwood Racing, Inc., a joint venture that operates Freehold Raceway in New Jersey.

Basis of Presentation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All significant intercompany accounts and transactions have been eliminated in consolidation.

Revenues

In accordance with common industry practice, casino revenues are the net of gaming wins less losses. Revenues exclude the retail value of complimentary rooms, food and beverage furnished gratuitously to customers. The estimated cost of providing these promotional allowances (which are netted against gross revenue) during the years ended December 31, 2000 and 2001 was $8,806,000 and $24,579,000, respectively. These complimentary items were not significant to the Company's total revenues prior to 2000 when the Company operated primarily as a pari-mutuel company.

Racing revenues include the Company's share of pari-mutuel wagering on live races after payment of amounts returned as winning wagers, and the Company's share of wagering from import and export simulcasting, as well as its share of wagering from its OTW's.

Management Service Fee

Revenues from the management service contract for Casino Rama (see Note 2) are based upon contracted terms and are recognized when the services are performed.

Depreciation and Amortization

Depreciation of property, plant and equipment and amortization of leasehold improvements are computed by the straight-line method at rates adequate to allocate the cost of applicable assets over their estimated useful lives ranging from three to forty years. The excess of cost over fair value of net assets acquired is being amortized on the straight-line method over forty years.

Amortization of the management service contract for Casino Rama is computed by the straight-line method through July, 2011, the expiration date of the agreement.

The Company reviews the carrying values of its long-lived and identifiable intangible assets for possible impairment whenever events or changes in circumstances indicate that the carrying amount of

the assets may not be recoverable based on undiscounted estimated future operating cash flows. As of December 31, 2001, the Company has determined that no impairment has occurred.

Income Taxes

The Company recognizes deferred tax assets and liabilities for the expected future tax consequences of events that have been recognized in the Company's financial statements or tax returns. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement carrying amounts and the tax bases of assets and liabilities using enacted tax rates in effect in the years in which the differences are expected to reverse.

Cash and Cash Equivalents

The Company considers all cash balances and highly liquid investments with original maturities of three months or less to be cash equivalents.

Net Income Per Common Share

Basic net income per share includes no dilution and is calculated by dividing net income by the weighted average number of common shares outstanding for the period. Dilutive net income per share reflects the potential dilution of net income per share that could result upon the exercise of outstanding stock options to purchase the Company's common stock (using the treasury stock method). Shares of common stock from dilutive stock options included in the denominator for the calculation of diluted earnings per share were 359,000, 475,000 and 591,000 shares at December 31, 1999, 2000 and 2001, respectively.

Options to purchase 590,000, 590,500, and 68,000 shares of common stock, with average exercise prices per share of $16.74, $17.14 and $19.61 were outstanding at December 31, 1999, 2000 and 2001, respectively. These options were not included in the computations of diluted earnings per common share for the respective years because the exercise prices of the options were greater than the average market prices of the common stock during the respective periods. These options expire at various times between October 2002 and January 2011.

Deferred Financing Costs

Deferred financing costs that are incurred by the Company in connection with the issuance of debt are deferred and amortized to interest expense over the life of the underlying indebtedness using the interest method adjusted to reflect any early repayments.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to credit risk consist of cash equivalents and accounts receivable.

The Company's policy is to limit the amount of credit exposure to any one financial institution and place investments with financial institutions evaluated as being creditworthy, or in short-term money market and tax-free bond funds which are exposed to minimal interest rate and credit risk. At December 31, 2001, and during the year then ended the Company had bank deposits and overnight repurchase agreements which, at times, exceeded federally insured limits.

Concentration of credit risk, with respect to receivables, is limited through the Company's credit evaluation process. The Company does not require collateral on its receivables. The Company's receivables consist principally of amounts due from other racetracks and their OTWs and $9.3 million due from Casino Rama for management service fees of $1.1 million and reimbursement of $8.2 million of expenses to be paid on behalf of Casino Rama as of December 31, 2001. The payable on behalf of

Casino Rama is included in accrued salaries and wages in the accompanying consolidated balance sheet as of December 31, 2001. Historically, the Company has not incurred any significant credit-related losses.

Fair Value of Financial Instruments

The following methods and assumptions are used to estimate the fair value of each class of financial instruments for which it is practical to estimate:

Cash and Cash Equivalents: The carrying amount approximates the fair value due to the short maturity of the cash equivalents.

Long-term Debt: The fair value of the Company's long-term debt is estimated based on the quoted market prices for the same or similar issues or on the current rates offered to the Company for debt of the same remaining maturities. The carrying amount approximates fair value since the Company's interest rates approximate current interest rates.

Use of Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses for the reporting periods. Actual results could differ from those estimates.

Interest Rate Swaps

The Company has a policy aimed at managing interest rate risk associated with its current and anticipated future borrowings. This policy enables the Company to use any combination of interest rate swaps, futures, options, caps and similar instruments. To the extent the Company employs such financial instruments pursuant to this policy, they are accounted for as hedging instruments. In order to qualify for hedge accounting, the underlying hedged item must expose the Company to risks associated with market fluctuations and the financial instrument used must be designated as a hedge and must reduce the Company's exposure to the market in fluctuations throughout the hedge period. If these criteria are not met, a change in the market value of the financial instrument is recognized as a gain or loss in the period of change. Otherwise, gains and losses are not recognized except to the extent that the financial instrument is disposed of prior to maturity. Net interest paid or received pursuant to the financial instrument is included as interest expense in the period.

Financial Accounting Standards Board ("FASB") Statement No. 133 (SFAS 133), "Accounting for Derivative Instruments and Hedging Activities," and Statement No. 138 (SFAS 138), "Accounting for Derivative Instruments and Hedging Activities—an amendment of SFAS 133," were effective for fiscal years beginning after June 15, 2000—fiscal year 2001 for the Company. The Company has conducted evaluations of hedging policies and strategies for existing and anticipated future derivative transactions. Adoption of these statements as of January 1, 2001 did not have a significant effect on the Company's financial statements. Recognition of derivative assets or liabilities on the balance sheet with market value adjustments recognized in other comprehensive income was not material at January 1, 2001.

Recent Accounting Standards

In June 2001, the Financial Accounting Standards Board finalized FASB Statements No. 141, *Business Combinations (SFAS 141*) and No. 142, *Goodwill and Other Intangibles Assets* (SFAS 142). SFAS 141 requires the use of the purchase method accounting and prohibits the use of pooling-of-interests method of accounting for business combinations initiated after June 30, 2001.

SFAS 141 also requires that the Company recognize acquired intangible assets apart from goodwill if the acquired intangible assets meet certain criteria. SFAS 141 applies to all business combinations initiated after June 30, 2001 and for purchase business combinations completed on or after July 1, 2001. It also requires, upon adoption of SFAS 142 that the Company reclassify the carrying amounts of intangible assets and goodwill based on certain criteria in SFAS 141.

SFAS 142 requires, among other things, that companies no longer amortize goodwill, but instead test goodwill for impairment at least annually. In addition, SFAS 142 requires that the Company identify reporting units for the purpose of assessing potential future impairments of goodwill, reassess the useful lives of the other existing recognized intangible assets, and cease amortization of intangible assets with an indefinite useful life. Any intangible asset with an indefinite useful life should be tested for impairment in accordance with the guidance in SFAS 142. SFAS 142 is required to be applied in fiscal years beginning after December 15, 2001 to all goodwill and other intangible assets recognized at that date, regardless of when those assets were initially recognized. SFAS 142 requires the Company to complete a transitional goodwill impairment test six months from the date of adoption. The Company is also required to reassess the useful lives of the other intangible assets within the first interim quarter after adoption of SFAS 142.

The Company's previous business combinations were accounted for using the purchase method. As of December 31, 2001, net carrying amount of goodwill is $160.2 million and other intangible assets (management service contract for Casino Rama) is $24.1 million. Amortization expense for goodwill and other intangible assets for the year ended December 31, 2001 was $3.5 million and $1.7 million, respectively. Currently, the Company is assessing but has not yet determined how the adoption of SFAS 142 will impact its financial position and results of operations.

In October 2001, the FASB issued SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets" ("SFAS 144"). This statement addresses financial accounting and reporting for the impairment or disposal of long-lived assets. This statement supersedes SFAS Statement No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of," and the accounting and reporting provisions of APB Opinion No. 30, "Reporting the Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions." This statement also amends ARB No. 51 "Consolidated Financial Statements," to eliminate the exception to consolidation for a subsidiary for which control is likely to be temporary. This statement requires that one accounting model be used for long-lived assets to be disposed of by sale, whether previously held and used or newly acquired. This statement also broadens the presentation of discontinued operations to include more disposal transactions. SFAS 144 is effective for fiscal years beginning after December 15, 2001 and interim periods within those fiscal years. Currently, the Company is assessing but has not determined how the adoption of SFAS 144 will impact its financial position and results of operations.

Reclassification

Certain prior years amounts have been reclassified to conform to the current year presentation.

2. Acquisitions

CRC

On April 27, 2001, the Company completed its acquisitions of (i) CRC Holdings, Inc. ("CRC") from the shareholders of CRC and (ii) the minority interest in Louisiana Casino Cruises, Inc. ("LCCI") not owned by CRC from certain shareholders (together, the "CRC Acquisition"). The CRC Acquisition was accomplished pursuant to the terms of Agreement and Plan of Merger among CRC Holdings, Inc., Penn National Gaming, Inc., Casino Holdings, Inc. and certain shareholders of CRC Holdings, Inc., dated as of July 31, 2000 (the "Merger Agreement"), and a Stock Purchase Agreement by and among

Penn National Gaming, Inc. and certain shareholders of LCCI, dated as of July 31, 2000. Under the Merger Agreement, CRC merged with Casino Holdings, Inc., a wholly owned subsidiary of the Company (the "Merger"). The aggregate consideration paid by the Company for the CRC Acquisition was approximately $182 million, including the repayment of existing debt of CRC and its subsidiaries. The purchase price of the CRC Acquisition was funded by the proceeds of the Company's offering of senior subordinated notes, which was completed in March 2001.

The assets acquired pursuant to the Merger and CRC Acquisition consist primarily of the Casino Rouge riverboat gaming facility in Baton Rouge, Louisiana, and a management contract for Casino Rama, a gaming facility located in Orillia, Canada.

The management service contract expires July 31, 2011. CHC Casinos Canada Limited ("CHC"), a wholly owned subsidiary of the Company, operates Casino Rama in the province of Ontario. The Company derives all of its management service fee revenue from this agreement. As of the date of the acquisition, the fair value of the Management Service Contract was $25.7 million.

Mississippi

On August 8, 2000, the Company completed its acquisition of all of the assets of the Casino Magic hotel, casino, golf resort, recreational vehicle park and marina in Bay St. Louis, Mississippi and the Boomtown Biloxi casino in Biloxi, Mississippi (the "Mississippi Acquisitions"), from Pinnacle Entertainment, Inc. (formerly Hollywood Park, Inc.). The Mississippi Acquisitions were accomplished pursuant to the terms of two asset purchase agreements, each dated December 10, 1999, for an aggregate of $195 million. In addition to acquiring all of the operating assets and related operations of the Casino Magic Bay St. Louis and Boomtown Biloxi properties, the Company entered into a licensing agreement to use the Boomtown and Casino Magic names and marks at the properties acquired.

Charles Town Minority Interest

On March 15, 2000, the Company purchased from the BDC Group ("BDC"), its joint venture partner in West Virginia, BDC's 11% interest in PNGI Charles Town Gaming Limited Liability Company, which owns and operates the Charles Town Entertainment Complex, for $6.0 million in cash. As a result of the purchase, PNGI Charles Town Gaming Limited Liability Company is now a 100% owned subsidiary of the Company.

Acquisition Accounting

The Company accounted for its acquisitions as purchases in accordance with Accounting Principles Board No. 16. The results of operations of the acquisitions are included in the consolidated financial statements from their respective dates of acquisition through December 31, 2001.

The excess of the purchase price paid over the fair market value of the net assets acquired, or goodwill, is currently amortized on a straight-line basis over 40 years. During 2001, as a result of the CRC Acquisition, the Company recorded goodwill totaling $85.5 million. Goodwill recorded in 2000 from the Mississippi and Charles Town minority interest acquisitions was $62.1 million and $1.5 million, respectively.

Unaudited Proforma Financial Information

Unaudited pro forma financial information for the years ended December 31, 2000 and 2001, as though the Mississippi and CRC Acquisitions had occurred on January 1, 2000, is as follows:

	Year ended December 31,	
	2000	2001
	(in thousands, except for per share data)	
Revenues	$ 493,776	$ 555,366
Income before extraordinary item	$ 21,617	$ 26,956
Extraordinary item, net of income tax benefit	(6,583)	—
Net income	$ 15,034	$ 26,956
Net income per common share		
Basic	$ 1.00	$ 1.76
Diluted	$ .97	$ 1.69
Weighted shares outstanding		
Basic	14,968	15,327
Diluted	15,443	15,918

3. Long-term Debt

Long-term debt is as follows:

	December 31,	
	2000	2001
	(in thousands)	
$350 million senior secured credit facility. This credit facility is secured by substantially all of the assets of the Company.	$ 309,250	$ 258,875
$200 million 11 1/8% senior subordinated notes. These notes are general unsecured obligations of the Company.	—	200,000
Other notes payable	49	34
	309,299	458,909
Less current maturities	11,390	15,141
	$ 297,909	$ 443,768

Senior Secured Credit Facility

On August 8, 2000, the Company entered into a $350 million senior secured credit facility with Lehman Brothers, Inc. and CIBC World Markets Corp. as co-arrangers, among others. The proceeds of the credit facility were used to finance the Mississippi Acquisitions, to pay off the Company's existing long-term debt and for working capital purposes. The credit facility provides for a $75 million revolving credit facility maturing on August 8, 2005, a $75 million Tranche A term loan maturing on August 8, 2005 and a $200 million Tranche B term loan maturing on August 8, 2006. The Company is required to repay the principal balance of the debt based upon a payment as stipulated in the loan agreement.

At the Company's option, the revolving credit facility and the Tranche A term loan may bear interest at (1) the highest of 1/2 of 1% in excess of the federal funds effective rate or the rate that the bank group announces from time to time as its prime lending rate plus an applicable margin of up to 2.25%, or (2) a rate tied to a eurodollar rate plus an applicable margin up to 3.25%. At the Company's option, the Tranche B term loan may bear interest at (1) the highest of 1/2 of 1% in excess of the

federal funds effective rate or the rate that the bank group announces from time to time as its prime lending rate plus an applicable margin of up to 3.25%, or (2) a rate tied to a eurodollar rate plus an applicable margin up to 4.00%. The credit facility provides for certain covenants, including those of a financial nature. Substantially all of the Company's assets are pledged as collateral under the credit agreement.

The weighted average effective interest rate at December 31, 2001 was 8.40%.

The outstanding amounts under the credit facility as of December 31, 2001 (in thousands) are as follows:

Revolving credit facility	$ —
Tranche A	61,875
Tranche B	197,000
Total	$ 258,875

As a result of the refinancing, the Company charged to operations deferred financing costs of $4.5 million related to the repayment of existing outstanding debt. In addition, the Company paid a tender premium of $6.7 million. The total, $11.2 million, has been reflected as an extraordinary item, net of an income tax benefit of $4.6 million in the consolidated statement of income for the year ended December 31, 2000.

Senior Subordinated Notes

On March 12, 2001, the Company completed an offering of $200 million of its 11 1/8% Senior Subordinated Notes due 2008. Interest on the notes is payable on March 1 and September 1 of each year, beginning September 1, 2001. These notes mature on March 1, 2008.

The Company may redeem all or part of the notes on or after March 1, 2005 at certain specified redemption prices. Prior to March 1, 2004, the Company may redeem up to 35% of the notes from proceeds of certain sales of its equity securities. The notes also are subject to redemption requirements imposed by state and local gaming laws and regulations.

The notes are general unsecured obligations and are guaranteed on a senior subordinated basis by all of the Company's current and future wholly owned domestic subsidiaries. The notes rank equally with the Company's future senior subordinated debt and junior to its senior debt, including debt under the Company's senior credit facility. In addition, the notes will be effectively junior to any indebtedness of our non-U.S. or unrestricted subsidiaries, none of which guarantee the notes.

The notes and guarantees were originally issued in a private placement pursuant to an exemption from the registration requirements of the Securities Act of 1933, as amended (the "Securities Act"). On July 30, 2001, the Company completed an offer to exchange the notes and guarantees for notes and guarantees registered under the Securities Act having substantially identical terms.

The proceeds from these notes were used to finance the CRC Acquisition that was completed on April 27, 2001.

The following is a schedule of future minimum repayments of long-term debt as of December 31, 2001:

December 31,	(in thousands)
2002	$ 15,141
2003	18,893
2004	22,625
2005	107,250
2006	95,000
Thereafter	200,000
Total minimum payments	458,909

At December 31, 2001, the Company was contingently obligated under letters of credit issued pursuant to the senior secured credit facility with face amounts aggregating $3.6 million.

The Company currently uses interest rate swaps to assist in managing interest incurred on its long-term debt. The difference between amounts received and amounts paid under such agreements, as well as any costs or fees, is recorded as a reduction of, or addition to, interest expense as incurred over the life of the swap or similar financial instrument. On December 20, 2000, the Company entered into a forward interest rate swap with a notional amount of $100 million, which has an effective date of December 22, 2000 and a termination date of December 22, 2003. Under this agreement, the Company pays a fixed rate of 5.835% against a variable interest rate based on the 90-day LIBOR rate. On August 3, 2001, the Company entered into a forward interest rate swap with a notional amount of $36 million, which has an effective date of August 7, 2001 and a termination date of June 30, 2004. Under this agreement, the Company pays a fixed rate of 4.8125% against a variable interest rate based on the 90-day LIBOR rate. At December 31, 2001, the 90-day LIBOR rate was 1.92%. The Company entered into these interest rate swap agreements to reduce the impact of future variable interest payments related to the Company's senior secured credit facility. The Company accounts for the interest rate swap agreements as cash flow hedges. The changes in the fair values of the interest rate swaps are recorded as adjustments to accrued interest in the accompanying consolidated balance sheet with the offset recorded in accumulated other comprehensive loss, which as of December 31, 2001 amounted to $3.8 million, net of an income tax benefit of $2.0 million. Any hedge ineffectiveness was not material for the year ended December 31, 2001. Amounts recorded in accumulated other comprehensive income will be amortized as an adjustment to interest expense over the term of the related derivative. The Company estimates $1.8 million of net derivative losses included in other comprehensive income will be reclassified into interest expense within the next twelve months.

4. Commitments and Contingencies

Litigation

In 1997 the Company acquired the Charles Town Races property in Charles Town, West Virginia, by exercising an option held by Showboat Development Company, now a wholly owned subsidiary of Harrah's Entertainment, Inc. In return for assigning the option, Showboat retained the right to operate a casino at the Charles Town Races property in return for a management fee, to be negotiated at the time of exercise, based on reasonable rates for similar properties. The express terms of the Showboat option do not specify what activities at Charles Town Races would constitute operation of a casino. The Company believes that its installation and operation of video lottery terminals linked to the West Virginia Lottery at the Charles Town Races facility does not constitute the operation of a casino under the Showboat option or under West Virginia law and therefore does not trigger Showboat's right to exercise the Showboat option. The rights under the Showboat option extended until November 2001.

On August 20, 2001, the Company was served with a lawsuit brought by Showboat Development Company against the Company and certain other parties related to the Charles Town Entertainment Complex. The suit alleges, among other things, that the Company's operation of coin-out video lottery terminals at the Charles Town facility constitutes the operation of a casino, thereby triggering Showboat's option. The suit also alleges that the Company's March 2000 acquisition of the 11% minority interest in Charles Town Races from BDC Group, the Company's former joint venture partner, was made in violation of a right of first refusal that Showboat holds from BDC covering the sale of any interest in any casino at Charles Town Races.

The Company filed in federal district court in Nevada a motion to dismiss this action for lack of personal jurisdiction and, in the alternate, a motion to transfer the case to the state of West Virginia. On January 25, 2002, the United States Court for the District of Nevada granted the Company's motion to dismiss. (See Note 12—Subsequent Events.)

In July 2001, a lawsuit was filed against the Company by certain surveillance employees at the Charles Town facility claiming that the Company's surveillance of those employees during working hours was improper. The lawsuit claims damages of $7.0 million and punitive damages of $15.0 million. The Company currently is conducting discovery in the case but, at this time, it believes that all of the claims of the employees are without merit. On February 12, 2002, the Company filed a motion for summary judgment that is pending before the court. The Company intends to vigorously defend itself against this action and does not believe that this action will have a material adverse effect on the Company's financial condition or results of operations.

In January 2002, an employee at the Charles Town facility initiated a suit against the Company alleging invasion of privacy. The employee claims in the suit that she was subjected to an involuntary strip search by other Charles Town employees as part of a theft investigation and is seeking punitive damages. The lawsuit claims damages of $0.5 million and punitive damages of $3.5 million. The Company believes that it has meritorious defenses and intends to vigorously defend itself against this suit.

The Company is also a party to certain other litigation but does not believe it will have a material adverse effect on the Company's financial condition or results of operations if any of these legal proceedings were adversely adjudicated or settled. Furthermore, the nature of the Company's business subjects it to the risk of lawsuits filed by customers and others in the ordinary course. In general, litigation can be expensive and time consuming to defend and could result in settlements or damages that could significantly impact results of operations or financial condition.

Operating Leases

The Company is liable under numerous operating leases for automobiles, other equipment and buildings, which expire through 2010. Total rental expense under these agreements was $1.3 million, $2.1 million and $4.0 million for the years ended December 31, 1999, 2000, and 2001, respectively.

The future lease commitments relating to noncancelable operating leases as of December 31, 2001 are as follows:

	(In thousands)
2002	$ 3,530
2003	3,325
2004	2,149
2005	1,163
2006	815
Thereafter	947
	$ 11,929

In addition, the Company leases land for use by Boomtown Biloxi. The lease term is 99 years and is cancelable upon one year's notice. The lease called for an initial deposit by the Company of $2.0 million and for annual base lease rent payments of $2.0 million and percentage rent equal to 5.0% of adjusted gaming win (as defined in the lease) over $25.0 million and 6.0% of the amount by which the adjusted gaming win exceeds $50.0 million. During the period from August 8, 2000 to December 31, 2000 and for the year ended December 31, 2001, the Company paid lease rent under this agreement of $1.3 million and $3.6 million, respectively.

Employee Benefit Plans

The Company has profit sharing plans under the provisions of Section 401(k) of the Internal Revenue Code that cover all eligible employees who are not members of a bargaining unit. The plans enable employees choosing to participate to defer a portion of their salary in a retirement fund to be administered by the Company. The Company's contributions to the plans are set at 50% of employees' elective salary deferrals up to a maximum of 6% of employee compensation. The Company also has a defined contribution plan, the Charles Town Races Future Service Retirement Plan, covering substantially all of its union employees at the Charles Town Entertainment Complex. The Company makes monthly contributions equal to the amount accrued for retirement expense, which is calculated as .25% of the daily mutual handle and .5% of the net video lottery revenues. Total contributions to the plans for the years ended December 31, 1999, 2000 and 2001 were $0.4 million, $1.1 million and $1.8 million, respectively.

The Company maintains a non-qualified defined contribution deferred compensation plan that covers most management and other highly compensated employees. This plan was effective March 1, 2001. The plan allows the participants to defer, on a pre-tax basis, a portion of their base annual salary and bonus and earn tax-deferred earnings on these deferrals. The plan also provides for matching Company contributions that vest over a seven-year period. The Company has established a Trust and transfers to the Trust, on an annual basis, an amount necessary to provide on a present value basis for its respective future liabilities with respect to participant deferral and Company contribution amounts. Plan contributions, net of forfeitures, for the initial period ended December 31, 2001 amounted to $0.5 million.

Agreements with Horsemen and Pari-Mutuel Clerks

The Company has agreements with the horsemen at each of the racetracks. The continuation of these agreements is required to allow the Company to conduct live racing and export and import simulcasting. In addition, the simulcasting agreements are subject to the horsemen's approval.

On March 23, 1999, the Company entered into a new four-year, nine-month purse agreement with the Horsemen's Benevolent and Protection Association, which represents the horsemen at the Company's Penn National Race Course facility in Grantville, Pennsylvania. The agreement ended an action by the horsemen, which began on February 16, 1999 and caused the Company to close Penn National Race Course and its six affiliated OTWs. As a result of the action the Company incurred a nonrecurring $1.3 million expense, primarily related to costs incurred to maintain the closed facilities inclusive of employee salaries and rents, for Horsemen's Action Expense. The initial term of the agreement ends on January 1, 2004 and automatically renews for another two-year period, without change, unless notice is given by either party at least ninety days prior to the end of the initial term.

On December 17, 1999, the Company entered into a new three-year purse agreement with the Pennsylvania Harness Horsemen's Association, Inc., which represents the owners, trainers, and drivers at the Company's The Downs Racing, Inc. facility in Wilkes-Barre, Pennsylvania. The contract term began on January 16, 2000 and ends on January 15, 2003. The Company also has an agreement with the Charles Town Horsemen that expires on December 31, 2002.

In addition to the horsemen agreements, in order to operate gaming machines in West Virginia, the Company is required to enter into written agreements regarding the proceeds of the gaming machines at the Charles Town Entertainment Complex with the pari-mutuel clerks at Charles Town. The agreement with the pari-mutuel clerks at Charles Town expires on December 31, 2004.

New Jersey Joint Venture

On January 28, 1999, the Company, along with its Joint Venture partner, Greenwood New Jersey, Inc. purchased certain assets and assumed certain liabilities of Freehold Racing Association, Garden State Racetrack and related entities, in a transaction accounted for as a purchase (the "New Jersey Acquisition").

Upon completion of the New Jersey Acquisition, the Company entered into a lease agreement for real property and equipment at Garden State Park (the leased premises). In December 2000, the leased premises were sold. In accordance with the lease, the agreement terminated 180 days after the closing of the sale. As a result, the Joint Venture's operations at Garden State Park ceased during May 2001.

The purchase price for the New Jersey Acquisition was approximately $46.0 million. The Company made an $11.3 million loan to the Joint Venture and an equity investment of $0.3 million. The loan is evidenced by a subordinated secured note which has been included in investment in and advances to unconsolidated affiliates in the consolidated financial statements. The note bears interest at prime plus 2.25% or a minimum of 10% (as of December 31, 2001 the interest rate was 10%). The Company has recorded interest income in the accompanying consolidated financial statements of $1.0 million, $1.3 million, and $1.2 million for the years ended December 31, 1999, 2000 and 2001, respectively.

In conjunction with the closing, the Company entered into a Debt Service Maintenance Agreement with a bank to guarantee 50% of a $23.0 million term loan to the Joint Venture. As of December 31, 2001, our obligation under our guarantee of the term loan was limited to approximately $10.4 million. The Company's investment in the Joint Venture is accounted for under the equity method. The original investment was recorded at cost and has been adjusted by the Company's share of income of the Joint Venture and distributions received. The Company's 50% share of the income of the Joint Venture is included in other income (expense) in the accompanying consolidated statements of income.

5. Income Taxes

Deferred tax assets and liabilities are comprised of the following:

	December 31,	
	2000	2001
	(In thousands)	
Deferred tax assets		
Accrued expenses	$ —	$ 3,625
State net operating losses	2,027	2,303
Other comprehensive income	—	2,043
Gross deferred tax assets	2,027	7,971
Deferred tax liabilities		
Property, plant and equipment	(15,507)	(43,610)
Net deferred taxes	$ (13,480)	$ (35,639)

	2000	2001
Reflected on consolidated balance sheets:		
Current deferred tax asset, net	$ —	$ 4,610
Noncurrent deferred tax liabilities, net	(13,480)	(40,249)
Net deferred taxes	$ (13,480)	$ (35,639)

The provision for income taxes charged to operations was as follows:

	Year ended December 31,		
	1999	2000	2001
		(In thousands)	
Current tax expense			
Federal	$ 2,759	$ 6,199	$ 5,542
State	108	660	107
Total current	2,867	6,859	5,649
Deferred tax expense (benefit)			
Federal	1,227	3,447	7,159
State	(317)	(169)	(200)
Total deferred	910	3,278	6,959
Total provision	$ 3,777	$ 10,137	$ 12,608

The following is a reconciliation of the statutory federal income tax rate to the actual effective income tax rate for the following periods:

	Year ended December 31,		
	1999	2000	2001
Percent of pretax income			
Federal tax rate	34.0%	34.0%	35.0%
State and local income taxes, net of federal tax benefit	2.0	1.1	(.2)
Permanent difference relating to amortization of goodwill	.2	.1	.3
Other miscellaneous items	(.3)	.1	(.4)
	35.9%	35.3%	34.7%

6. Supplemental Disclosures of Cash Flow Information

Cash paid during the year for interest was $8.7 million, $18.4 million and $36.7 million in 1999, 2000 and 2001, respectively.

Cash paid during the year for income taxes was $3.0 million, $3.9 million and $3.5 million in 1999, 2000 and 2001, respectively.

7. Stock Based Compensation

In April 1994, the Company's Board of Directors and shareholders adopted and approved the Stock Option Plan (the "Plan"). The Plan permits the grant of options to purchase up to 3,000,000 shares of Common Stock, subject to antidilution adjustments, at a price per share no less than 100% of the fair market value of the Common Stock on the date an option is granted with respect to incentive stock options only. The price would be no less than 110% of fair market value in the case of an incentive stock option granted to any individual who owns more than 10% of the total combined voting power of all classes of outstanding stock. The Plan provides for the granting of both incentive stock options intended to qualify under Section 422 of the Internal Revenue Code of 1986, and nonqualified stock options, which do not so qualify. At December 31, 2001, there were 758,250 options available for future grants under the Plan. Unless the Plan is terminated earlier by the Board of Directors, the Plan will terminate in April 2004.

Stock options that expire between October 23, 2002 and January 1, 2011 have been granted to officers and directors to purchase Common Stock at prices ranging from $3.33 to $27.77 per share. All

options were granted at market prices at date of grant. The following table contains information on stock options issued under the Plan for the three-year period ended December 31, 2001:

	Option Shares	Average Exercise Price
Outstanding at January 1, 1999	1,184,500	$ 9.50
Granted	149,500	6.98
Exercised	(27,000)	5.63
Canceled	(31,750)	13.40
Outstanding at December 31, 1999	1,275,250	7.27
Granted	294,500	9.65
Exercised	(145,000)	4.77
Canceled	(11,000)	10.36
Outstanding at December 31, 2000	1,413,750	8.01
Granted	518,000	11.70
Exercised	(474,250)	6.19
Canceled	(23,000)	4.77
Outstanding at December 31, 2001	1,434,500	10.00

In addition, 300,000 Common Stock options were issued to the Company's Chairman outside the Plan on October 23, 1996. These options were issued at $17.63 per share and are exercisable through October 23, 2006.

Exercisable at year end:

	Option Shares	Weighted Average Exercise Price
1999	1,242,625	$ 9.49
2000	1,228,792	10.03
2001	900,418	11.98

The following table summarizes information about stock options outstanding at December 31, 2001:

	Exercise Price Range			
	$3.33 to $6.88	$7.31 to $10.63	$10.75 to $27.77	Total $3.33 to $27.77
Outstanding options				

Number outstanding	424,750	673,250	636,500	1,734,500
Weighted average remaining contractual life (years)	3.96	6.51	4.69	5.22
Weighted average exercise price	$ 5.08	$ 9.63	$ 17.25	$ 11.32
Exercisable options				
Number outstanding	336,959	58,459	505,000	900,418
Weighted average exercise price	$ 4.65	$ 8.14	$ 17.32	$ 11.98

In accordance with Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123"), the Company has adopted fair value as the measurement basis for transactions in which the Company acquires goods or services from nonemployees in exchange for equity instruments. In addition, SFAS 123 also has certain disclosure provisions. Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employers" ("APB 25"), uses an intrinsic value based method of accounting. The Company has decided to continue to apply APB 25 for its stock-

based employee compensation arrangements. Accordingly, no compensation cost has been recognized. Had compensation cost for the Company's employee stock option plan been determined based on the fair value at the grant date for awards under the plan consistent with the method of SFAS 123, the Company's net income and net income per share would have been as follows:

	Year ended December 31,		
	1999	2000	2001
	(In Thousands Except per Share Data)		
Net income			
As reported	$ 6,733	$ 11,992	$ 23,758
Pro forma	6,143	11,702	22,985
Basic net income per share			
As reported	$ .45	$ .80	$ 1.55
Pro forma	.41	.78	1.50
Diluted net income per share			
As reported	$ .44	$ .78	$ 1.49
Pro forma	.40	.76	1.44

The weighted-average fair value of the stock options granted during the years ended December 31, 1999, 2000, and 2001 were $2.21, $3.95 and $7.71, respectively. The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted average assumptions used for grants in 1999, 2000 and 2001: dividend yield of 0%; expected volatility of 35%; risk-free interest rate of 6%; and expected lives of five years. The effects of applying SFAS 123 in the above pro forma disclosure are not indicative of future amounts. SFAS 123 does not apply to awards prior to 1995. Additional awards in future years are anticipated.

8. Shareholder Rights Plan

On May 20, 1998, the Board of Directors of the Company authorized and declared a dividend distribution of one Preferred Stock purchase right (the "Rights") for each outstanding share of the Company's common stock, par value $.01 per share (the "Common Shares"), payable to shareholders of record at the close of business on March 19, 1999. Each Right entitles the registered holder to purchase from the Company one one-hundredth of a share (a "Preferred Stock Fraction"), or a combination of securities and assets of equivalent value, at a purchase price of $40.00 per Preferred Stock Fraction (the "Purchase Price"), subject to adjustment. The description and terms of the Rights are set forth in a Rights Agreement (the "Rights Agreement") dated March 2, 1999 between the Company and Continental Stock Transfer and Trust Company as Rights Agent. All terms not otherwise defined herein are used as defined in the Rights Agreement.

The Rights will be exercisable only if a person or group acquires 15% or more of the Company's common stock (the "Stock Acquisition Date"), announces a tender or exchange offer that will result in such person or group acquiring 20% or more of the outstanding common stock or is a beneficial owner of a substantial amount of Common Shares (at least 10%) whose ownership may have a material adverse impact ("Adverse Person") on the business or prospects of the Company. The Company will be entitled to redeem the Rights at a price of $.01 per Right (payable in cash or stock) at any time until 10 days following the Stock Acquisition Date or the date on which a person has been determined to be an Adverse Person. If the Company is involved in certain transactions after the Rights become exercisable, a Holder of Rights (other than Rights owned by a shareholder who has acquired 15% or more of the Company's outstanding common stock or is determined to be an Adverse Person, which Rights become void) is entitled to buy a number of the acquiring company's Common Shares or the Company's common stock, as the case may be, having a market value of twice the exercise price of each Right. A potential dilutive effect may exist upon the exercise of the Rights. Until a Right is exercised, the holder will have no rights as a stockholder of the Company, including, without

limitations, the right to vote as a stockholder or to receive dividends. The Rights are not exercisable until the Distribution Date and will expire at the close of business on March 18, 2009, unless earlier redeemed or exchanged by the Company.

9. Segment Information

The Company has adopted SFAS No. 131 "Disclosures About Segments of an Enterprise and Related Information." The Company has determined that it currently operates in two segments: (1) gaming and (2) racing.

The accounting policies for each segment are the same as those described in the "Summary of Significant Accounting Policies" for the year ended December 31, 2001. The Company and the gaming industry use earnings before interest, taxes, depreciation and amortization, ("EBITDA") as a means to evaluate performance. EBITDA should not be considered as an alternative to, or more meaningful than, net income (as determined in accordance with accounting principles generally accepted in the United States) as a measure of operating results or cash flows (as determined in accordance with accounting principles generally accepted in the United States) or as a measure of the Company's limitations.

The table below presents information about reported segments (in thousands):

	Revenues Year ended December 31,

	1999	2000	2001
	(In thousands)		
Gaming(1)(2)	$ 80,015	$ 191,495	$ 422,012
Racing	91,933	101,937	98,766
Eliminations(3)	(1,588)	(1,631)	(1,386)
Total	$ 170,360	$ 291,801	$ 519,392

	EBITDA(4) Year ended December 31,		
	1999	2000	2001
	(In thousands)		
Gaming(1)(2)	$ 8,628	$ 38,988	$ 95,100
Racing	17,868	20,493	17,236
Total	$ 26,496	$ 59,481	$ 112,336

	Total Assets As of December 31,	
	2000	2001
	(In thousands)	
Gaming(1)(2)	$ 673,682	$ 1,092,400
Racing	91,756	90,014
Eliminations(5)	(325,538)	(503,037)
	$ 439,900	$ 679,377

(1) Reflects results of the Mississippi properties since August 8, 2000 acquisition.

(2) Reflects results of the CRC Acquisition since April 28, 2001.

(3) Primarily reflects intercompany transactions related to import/export simulcasting.

(4) EBITDA consists of income from operations, plus depreciation and amortization, plus earnings from joint venture.

(5) Primarily reflects elimination of intercompany investments, receivables and payable.

10. Summarized Quarterly Data (Unaudited)

Following is a summary of the quarterly results of operations for the years ended December 31, 2000 and 2001:

	Fiscal Quarter			
	First	Second	Third	Fourth
	(in thousands, except per share data)			
2000				
Total revenues	$ 52,119	$ 60,911	$ 86,982	$ 91,789
Income from operations	7,627	11,208	14,446	11,839
Net income (loss)	3,622	6,227	(582)	2,725
Basic earnings (loss) per share	0.24	.42	(.04)	.18
Diluted earnings (loss) per share	0.24	.40	(.04)	.18
2001				
Total revenues	$ 105,160	$ 132,732	$ 145,534	$ 135,966
Income from operations	14,778	21,236	23,298	18,400
Net income	4,619	6,485	7,710	4,944
Basic earnings per share	.31	.42	.50	.32
Diluted earnings per share	.30	.40	.48	.31

11. Pending Acquisition

On August 30, 2001, the Company entered into a definitive agreement to acquire all of the assets of the Bullwhackers Casino operations, in Black Hawk, Colorado, from Colorado Gaming and Entertainment Co., a subsidiary of Hilton Group plc, for $6.5 million in cash. The Bullwhackers assets consist of the Bullwhackers Casino, the adjoining Bullpen Sports Casino, the Silver Hawk Saloon and Casino, an administrative building and a 475-car parking area, all located in the Black Hawk, Colorado gaming jurisdiction. The Bullwhackers properties comprise a total of 63,800 square feet of interior space, 20,700 square feet of which is devoted to gaming, consisting of 1,002 slot machines and 16 table games. The properties are located on leased land as well as 3.25 acres of land included in the acquisition, much of which is utilized for parking. The transaction is anticipated to close in the second quarter of 2002. As of December 31, 2001, the Company has advanced $0.5 million under the terms of the agreement.

12. Subsequent Events

On February 20, 2002 the Company closed an offering of 4,600,000 shares of common stock in a public offering. The price of the public offering was $30.50 per share. Of the common shares sold in the offering, 3,350,000 shares were sold by the Company and 1,250,000 shares were sold by The Carlino Family Trust, a related party. The Company intends to use its net proceeds from the offering of approximately $96.0 million, after deducting underwriting discounts and related expenses, to repay indebtedness under the existing senior secured credit facility. The Company did not receive any proceeds from the offering by The Carlino Family Trust.

On February 28, 2002, the Company consummated an offering of up to $175.0 million aggregate principal of $8^{7}/_{8}$% Senior Subordinated Notes due March 15, 2010. The net proceeds of these notes will be used to repay outstanding loan indebtedness under the Company's senior credit facility. The Senior Subordinated Notes will rank equally with all of the Company's other existing and future senior

subordinated indebtedness and will be junior to the Company's senior indebtedness, including debt under the Company's secured credit facility.

On February 13, 2002, Showboat Development Company filed a lawsuit against the Company in the United States District Court for the Eastern District of Pennsylvania. The substance of this lawsuit is similar to the claim that was dismissed in Nevada. (See Note 4—Commitments and Contingencies.)

On March 27, 2002, Penn National and Showboat agreed to settle all litigation related to this matter. Under the settlement, we agreed to make a one-time payment of $1.0 million to Showboat, which was recognized in general and administrative expenses in our operating results for the fourth quarter of 2001.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

PART III

ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

The information required by this item concerning directors is hereby incorporated by reference to the Company's definitive proxy statement for its 2002 Annual Meeting of Shareholders to be filed with the Securities and Exchange Commission within 120 days after December 31, 2001 pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended. Information required by this item concerning executive officers is included in Part I of this Annual Report on Form 10-K.

ITEM 11. EXECUTIVE COMPENSATION

The information called for in this item is hereby incorporated by reference to the 2002 Proxy Statement.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information called for in this item is hereby incorporated by reference to the 2002 Proxy Statement.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information called for in this item is hereby incorporated by reference to the 2002 Proxy Statement.

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K

(a) 1 and 2.	Financial Statements and Financial Statement Schedules. The following is a list of the Consolidated Financial Statements of the Company and its subsidiaries and supplementary data filed as part of Item 8 hereof: Report of Independent Certified Public Accountants Consolidated Balance Sheets as of December 31, 2000 and 2001 Consolidated Statements of Income for the years ended December 31, 1999, 2000 and 2001 Consolidated Statements of Shareholders' Equity for the years ended December 31, 1999, 2000 and 2001 Consolidated Statements of Cash Flows for the years ended December 31, 1999, 2000 and 2001 All other schedules are omitted because they are not applicable, or not required, or because the required information is included in the Consolidated Financial Statements or notes thereto.
3.	*Exhibits, Including Those Incorporated by Reference.* The exhibits to this Report are listed on the accompanying index to exhibits and are incorporated herein by reference or are filed as part of this annual report on Form 10-K.
(b)	Reports on Form 8-K. The Company did not file any reports on Form 8-K during the fourth quarter 2001.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

PENN NATIONAL GAMING, INC.

By: /s/ PETER M. CARLINO

Peter M. Carlino
Chairman of the Board
and Chief Executive Officer

Dated: March 28, 2002

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Each person whose signature appears below in so signing also makes, constitutes and appoints Robert S. Ippolito his true and lawful attorney-in-fact, in his name, place and stead to execute and cause to be filed with the Securities and Exchange Commission any or all amendments to this report.

Signature	Title	Date
/s/ PETER M. CARLINO Peter M. Carlino	Chairman of the Board, Chief Executive Officer and Director (Principal Executive Officer)	March 28, 2002
/s/ KEVIN DESANCTIS Kevin DeSanctis	President and Chief Operating Officer	March 28, 2002
/s/ WILLIAM CLIFFORD William Clifford	Senior Vice President Finance and Chief Financial Officer (Principal Financial Officer)	March 28, 2002
/s/ ROBERT S. IPPOLITO Robert S. Ippolito	Vice President, Secretary and Treasurer (Principal Accounting Officer)	March 28, 2002
/s/ WILLIAM J. BORK William J. Bork	Director	March 28, 2002

/s/ HAROLD CRAMER Harold Cramer	Director	March 28, 2002
/s/ DAVID A. HANDLER David A. Handler	Director	March 28, 2002
/s/ ROBERT P. LEVY Robert P. Levy	Director	March 28, 2002
/s/ JOHN M. JACQUEMIN John M. Jacquemin	Director	March 28, 2002

EXHIBIT INDEX

Exhibit	Description of Exhibit
2.1	Agreement and Plan of Reorganization dated April 11, 1994 among Penn National Gaming, Inc., Carlino Family Partnership, Carlino Financial Corporation and the shareholders and general partners of the entities now comprising Penn National Gaming, Inc. (Incorporated by reference to the Company's registration statement on Form S-1, File #33-77758, dated May 26, 1994.)

2.2 Amendment to Agreement and Plan of Reorganization dated April 26, 1994 among Penn National Gaming, Inc., Carlino Family Partnership, Carlino Financial Corporation and the shareholders and general partners of the entities now comprising Penn National Gaming, Inc. (Incorporated by reference to the Company's registration statement on Form S-1, File #33-77758, dated May 26, 1994.)

2.3 Agreement and Plan of Reorganization dated April 11, 1994 between Penn National Gaming, Inc. and Thomas J. Gorman. (Incorporated by reference to the Company's registration statement on Form S-1, File #33-77758, dated May 26, 1994.)

2.4 Amendment to Agreement and Plan of Reorganization dated April 26, 1994 between Penn National Gaming, Inc. and Thomas J. Gorman. (Incorporated by reference to the Company's registration statement on Form S-1, File #33-77758, dated May 26, 1994.)

2.5 First Amendment to Asset Purchase Agreement dated as of January 28, 1999 by and between among Greenwood New Jersey, Inc., International Thoroughbred Breeders, Inc., Garden State Race Track, Inc., Freehold Racing Association, Atlantic City Harness Inc., Circa 1850, Inc., and Penn National Gaming, Inc. (Incorporated by reference to the Company's current report on Form 8-K, dated February 12, 1999.)

2.6 Asset Purchase Agreement dated as of December 9, 1999 between BSL, Inc. and Casino Magic Corp. (Incorporated by reference to the Company's current report on Form 8-K, dated August 8, 2000.)

2.7 First Amendment to Asset Purchase Agreement dated as of December 17, 1999 between BSL, Inc. and Casino Magic Corp. (Incorporated by reference to the Company's current report on Form 8-K, dated August 8, 2000.)

2.8 Second Amendment to Asset Purchase Agreement dated as of August 1, 2000 between BSL, Inc. and Casino Magic Corp. (Incorporated by reference to the Company's current report on Form 8-K, dated August 8, 2000.)

2.9 Asset Purchase Agreement dated as of December 9, 1999 between BTN, Inc. and Boomtown Inc. (Incorporated by reference to the Company's current report on Form 8-K, dated August 8, 2000.)

2.10 First Amendment to Asset Purchase Agreement dated as of December 17, 1999 between BTN, Inc. and Boomtown Inc. (Incorporated by reference to the Company's current report on Form 8-K, dated August 8, 2000.)

2.11 Second Amendment to Asset Purchase Agreement dated as of August 1, 2000 between BTN, Inc. and Boomtown Inc. (Incorporated by reference to the Company's current report on Form 8-K, dated August 8, 2000.)

2.12 Agreement and Plan of Merger among CRC Holdings, Inc., Penn National Gaming, Inc., Casino Holdings, Inc., Sherwood Weiser and Donald E. Lefton, dated as of July 31, 2000. (Incorporated by reference to the Company's current report on Form 8-K, dated July 31, 2000.)

2.13 Stock Purchase Agreement by and among Penn National Gaming, Inc., Dan S. Meadows, Thomas L. Meehan and Jerry L. Bayles, dated as of July 31, 2000. (Incorporated by reference to the Company's current report on Form 8-K, dated July 31, 2000.)

3.1 Amended and Restated Articles of Incorporation of Penn National Gaming, Inc., filed with the Pennsylvania Department of State on October 15, 1996. (Incorporated by reference as Exhibit 3.1 to the Company's Form S-3, File #333-63780, dated June 25, 2001.)

3.2 Articles of Amendment to the Amended and Restated Articles of Incorporation of Penn National Gaming, Inc., filed with the Pennsylvania Department of State on November 13, 1996. (Incorporated by reference as Exhibit 3.2 to the Company's Form S-3, File #333-63780, dated June 25, 2001.)

3.3 Statement with respect to shares of Series A Preferred Stock of Penn National Gaming, Inc., filed with the Pennsylvania Department of State on March 16, 1999. (Incorporated by reference as Exhibit 3.3 to the Company's Form S-3, File #333-63780, dated June 25, 2001.)

3.4* Articles of Amendment to the Amended and Restated Articles of Incorporation of Penn National Gaming, Inc., filed with the Pennsylvania Department of State on July 23, 2001.

3.5 Bylaws of Penn National Gaming, Inc. (Incorporated by reference to the Company's registration statement on Form S-1, File #33-77758, dated May 26, 1994.)

4.1 Rights Agreement dated as of March 2, 1999, between Penn National Gaming, Inc. and Continental Stock Transfer and Trust Company. (Incorporated by reference to the Company's current report on Form 8-K, dated March 17, 1999.)

4.2 Indenture dated as of March 12, 2001 by and among Penn National Gaming, Inc., certain guarantors and State Street Bank and Trust Company relating to the Series A and Series B $11^1/8$% Senior Subordinated Notes due 2008. (Incorporated by reference as Exhibit 4.1 to the Company's Form 10-Q, dated March 31, 2001.)

4.3 Form of Penn National Gaming, Inc. Series A $11^1/8$% Senior Subordinated Note due 2008. (Incorporated by reference as Exhibit 4.2 to the Company's Form S-4, File #333-62672, filed on June 8, 2001.)

4.4 Form of Penn National Gaming, Inc. Series B $11^1/8$% Senior Subordinated Note due 2008. (Incorporated by reference as Exhibit 4.3 to the Company's Form S-4, File #333-62672, filed on June 8, 2001.)

4.5 Registration Rights Agreement dated as of March 12, 2001 by and among Penn National Gaming, Inc., certain of its

subsidiaries, and Lehman Brothers Inc. and CIBC World Markets Corp. (Incorporated by reference as Exhibit 4.4 to the Company's Form S-4, File #333-62672, filed on June 8, 2001.)

9.1 Form of Trust Agreement of Peter D. Carlino, Peter M. Carlino, Richard J. Carlino, David E. Carlino, Susan F. Harrington, Anne de Lourdes Irwin, Robert M. Carlino, Stephen P. Carlino and Rosina E. Carlino Gilbert. (Incorporated by reference to the Company's registration statement on Form S-1, File #33-77758, dated May 26, 1994.)

10.1# 1994 Stock Option Plan. (Incorporated by reference to the Company's registration statement on Form S-1, File #33-77758, dated May 26, 1994.)

10.2# Employment Agreement dated April 12, 1994 between Penn National Gaming, Inc. and Peter M. Carlino. (Incorporated by reference to the Company's registration statement on Form S-1, File #33-77758, dated May 26, 1994.)

10.3# Amendment to Employment Agreement dated June 1, 1999, between Penn National Gaming, Inc. and Peter M. Carlino. (Incorporated by reference to the Company's Form 10-Q, dated August 12, 1999.)

10.4# Employment Agreement dated April 12, 1994 between the Registrant and Robert S. Ippolito. (Incorporated by reference to the Company's registration statement on Form S-1, File #33-77758, dated May 26, 1994.)

10.5# Amendment to Employment Agreement dated June 1, 1999, between Penn National Gaming, Inc. and Robert S. Ippolito. (Incorporated by reference to the Company's Form 10-Q, dated August 12, 1999.)

10.6#* Employment Agreement dated February 2001 between Penn National Gaming, Inc. and Kevin DeSanctis.

10.7#* Employment Agreement dated July 30, 2001 between Penn National Gaming, Inc. and William Clifford.

10.9 Lease dated March 7, 1991 between Shelbourne Associated and PNRC Limited Partnership. (Incorporated by reference to the Company's registration statement on Form S-1, File #33-77758, dated May 26, 1994.)

10.10 Lease dated June 30, 1993 between John E. Kyner, Jr. and Sandra R. Kyner, and PNRC Chambersburg, Inc. (Incorporated by reference to the Company's registration statement on Form S-1, File #33-77758, dated May 26, 1994.)

10.11 Consulting Agreement dated August 29, 1994, between Penn National Gaming, Inc. and Peter D. Carlino. (Incorporated by reference to the Company's Form 10-K, dated March 23, 1995.)

10.12 Lease dated July 7, 1994, between North Mall Associates and Penn National Gaming, Inc. for the York OTW. (Incorporated by reference to the Company's Form 10-K, dated March 23, 1995.)

10.13 Lease dated March 31, 1995 between Wyomissing Professional Center III, LP and Penn National Gaming, Inc. for the Wyomissing Corporate Office. (Incorporated by reference to the Company's Form 10-K, dated March 20, 1996.)

10.14 Lease dated July 17, 1995 between E. Lampeter Associates and Pennsylvania National Turf Club, Inc. for the Lancaster OTW, as amended. (Incorporated by reference to the Company's Form 10-K, dated March 20, 1996.)

10.15# Agreement dated September 1, 1995 between Mountainview Thoroughbred racing Association and Pennsylvania National Turf Club, Inc. and Sports Arena Employees' Union Local 137 (non-primary location.) (Incorporated by reference to the Company's Form 10-K, dated March 20, 1996.)

10.16 Agreement dated December 27, 1995 between Pennsylvania National Turf Club, Inc. and Teleview Racing Patrols, Inc. (Incorporated by reference to the Company's Form 10-K, dated March 20, 1996.)

10.17 Amended and Restated Option Agreement dated as of February 17, 1995 between the PNGI Charles Town Gaming Limited Liability Company (The Joint Venture) and Charles Town Racing Limited Partnership and Charles Town Races, Inc. (Incorporated by reference to the Company's Form 10-Q, dated November 13,1996.)

10.18# Agreement dated March 19, 1997, between PNGI Charles Town Gaming Limited Liability Company and the Charles Town HBPA, Inc. (Incorporated by reference to the Company's Form 10-K, dated March 27, 1997.)

10.19# Agreement dated March 21, 1997, between PNGI Charles Town Gaming Limited Liability Company and The West Virginia Thoroughbred Breeders Association. (Incorporated by reference to the Company's Form 10-K, dated March 27, 1997.)

10.20# Agreement between PNGI Charles Town Gaming Limited Liability Company and The West Virginia Union of Mutuel Clerks, Local 533, Service Employees International Union, AFL-CIO. (Incorporated by reference to the Company's Form 10-K, File #0-24206, dated March 27, 1997.)

10.21# Agreement dated January 1, 2001 by and between PNGI Charles Town Gaming Limited Liability Company, or its

successors, and the West Virginia Union of Mutuel Clerks, Local 553, Service Employees International Union, AFL-CIO.

10.22# Agreement dated October 2, 1996 between Pennsylvania National Turf Club, Inc., Mountainview Racing Association and Sports Arena Employees' Union Local No. 137 (Primary Location.) (Incorporated by reference to the Company's Form 10-K, dated March 27, 1998.)

10.23 Lease dated July 1, 1997 between Laurel Mall Associated and the Downs Off-Track Wagering, Inc. (Incorporated by reference to the Company's Form 10-K, dated March 27, 1998.)

10.24 Totalisator Agreement dated November 19, 1997, between Penn National Gaming, Inc. and AutoTote Systems, Inc. (Incorporated by reference to the Company's Form 10-K, dated March 27, 1998.)

10.25 Purchase Agreement dated July 7, 1998, between Ladbroke Racing Management-Pennsylvania and Mountainview Thoroughbred Racing Association. (Incorporated by reference to the Company's Form 10-Q, dated June 30, 1998.)

10.26 Lease Agreement between Penn National Gaming, Inc. and Eagle Valley Realty dated July 14, 1998 relating to the Johnstown OTW. (Incorporated by reference to the Company's Form 10-Q, dated September 30, 1998.)

10.27 Joint Venture Agreement dated October 30, 1998 between Penn National Gaming, Inc. and Greenwood New Jersey, Inc. (Incorporated by reference to the Company's Form 10-Q, dated September 30, 1998.)

10.28 Amendment dated November 2, 1998 to Joint Venture Agreement between Penn National Gaming, Inc. and Greenwood New Jersey, Inc. (Incorporated by reference to the Company's Form 10-Q, dated September 30, 1998.)

10.29 First Amendment to Joint Venture Agreement dated as of January 28, 1999, by and between Greenwood New Jersey, Inc., and Penn National Gaming, Inc. (Incorporated by reference to the Company's current report on Form 8-K, dated February 12, 1999.)

10.30 First Amendment to Asset Purchase Agreement dated as of January 28, 1999 by and among Greenwood New Jersey, Inc., International Thoroughbred Breeders, Inc., Garden State Race Track, Inc., Freehold Racing Association, Atlantic City Harness Inc., Circa 1850, Inc., and Penn National Gaming, Inc. (Incorporated by reference to the Company's current report on Form 8-K, dated January 28, 1999.)

10.31 First Amendment to Joint Venture Agreement dated as of January 28, 1999, by and between Greenwood New Jersey, Inc. and Penn National Gaming, Inc. (Incorporated by reference to the Company's current report on Form 8-K, dated January 28, 1999.)

10.32 Second Amendment to Joint Venture Agreement dated as of July 29, 1999, between Penn National Gaming, Inc. and Greenwood Racing, Inc. (Incorporated by reference to the Company's Form 10-Q, dated August 12, 1999.)

10.33 Shareholder's Agreement dated July 29, 1999, between Penn National Holding Company and Greenwood Racing, Inc. (Incorporated by reference to the Company's Form 10-Q, dated August 12, 1999.)

10.34 Amended and Restated Limited Partnership Agreement dated July 29, 1999, between FR Park Racing, L.P., Pennwood Racing, Inc. and Penn National GSFR, Inc. (Incorporated by reference to the Company's Form 10-Q, dated August 12, 1999.)

10.35 Amended and Restated Limited Partnership Agreement dated July 29, 1999, between FR Park Services, L.P., Pennwood Racing, Inc. and Penn National GSFR, Inc. (Incorporated by reference to the Company's Form 10-Q, dated August 12, 1999.)

10.36 Amended and Restated Limited Partnership Agreement dated July 29, 1999, between GS Park Racing, L.P., Pennwood Racing, Inc. and Penn National GSFR, Inc. (Incorporated by reference to the Company's Form 10-Q, dated August 12, 1999.)

10.37 Amended and Restated Limited Partnership Agreement dated July 29, 1999, between GS Park Services, L.P., Pennwood Racing, Inc. and Penn National GSFR, Inc. (Incorporated by reference to the Company's Form 10-Q, dated August 12, 1999.)

10.38 Subordination and Intercreditor Agreement dated July 29, 1999, between Penn National Gaming, Inc., FR Park Racing, L.P., and Commerce Bank, N.A. (Incorporated by reference to the Company's Form 10-Q, dated August 12, 1999.)

10.39 Debt Service Maintenance Agreement dated July 29, 1999, between Penn National Gaming, Inc. and Commerce Bank, N.A. (Incorporated by reference to the Company's Form 10-Q, dated August 12, 1999.)

10.40+ Agreement dated July 9, 1999, between Penn National Gaming, Inc. and American Digital Communications, Inc. (Portions of this Exhibit have been omitted pursuant to a request for confidential treatment.) (Incorporated by reference to the Company's Form 10-Q, dated August 12, 1999.)

10.41 Asset Purchase Agreement between BSL., Inc. and Casino Magic Corp. dated December 9, 1999. (Filed as exhibit 99.2 to the Company's current report on Form 8-K, dated December 17, 1999.)

10.42 Guaranty of Penn National Gaming, Inc. to Casino Magic Corp. dated December 9, 1999. (Filed as exhibit 99.3 to the Company's current report on Form 8-K, dated December 17, 1999.)

10.43 Guaranty of Hollywood Park, Inc. to BSL, Inc. dated December 9, 1999. (Filed as exhibit 99.4 to the Company's current report on Form 8-K, dated December 17, 1999.)

10.44 Assignment and Assumption of Lease Agreement dated December 31, 1998 between Mountainview Thoroughbred Racing Association and Ladbroke Racing Management-Pennsylvania. (Incorporated by reference to the Company's Form 10K, dated March 30, 1999.)

10.45 Subordination, Non-Disturbance and Attornment Agreement dated December 31, 1998 between Mountainview Thoroughbred Racing Association and CRIIMI MAE Services Limited Partnership. (Incorporated by reference to the Company's Form 10-K, dated March 30, 1999.)

10.46 Live Racing Agreement dated March 23, 1999 between Pennsylvania National Turf Club, Inc. and Mountainview Thoroughbred Racing Association and Pennsylvania Horsemen's Benevolent and Protection Association, Inc. (Incorporated by reference to the Company's Form 10-K, dated March 30, 1999.)

10.47 First Amendment to Asset Purchase Agreement between BSL, Inc. and Casino Magic Corp. dated December 17, 1999. (Filed as exhibit 99.5 to the Company's current report on Form 8-K, dated December 17, 1999.)

10.48 Asset Purchase Agreement between BTN, Inc. and Boomtown, Inc. dated December 9, 1999. (Filed as exhibit 99.6 to the Company's current report on Form 8-K, dated December 17, 1999.)

10.49 Guaranty of Penn National Gaming, Inc. to Boomtown, Inc. dated December 9, 1999 (Filed as exhibit 99.7 to the Company's current report on Form 8-K, dated December 17, 1999.)

10.50 Guaranty of Hollywood Park, Inc. to BTN, Inc. dated December 9, 1999. (Filed as exhibit 99.8 to the Company's current report on Form 8-K, dated December 17, 1999.)

10.51 First Amendment to Asset Purchase Agreement between BTN, Inc. and Boomtown, Inc. dated December 17, 1999. (Filed as exhibit 99.9 to the Company's current report on Form 8-K, dated December 17, 1999.)

10.52 Harness Horsemen agreement dated December 17, 1999 between The Downs Racing, Inc. and the Pennsylvania Harness Horsemen. (Incorporated by reference to the Company's Form 10-K, dated March 20, 2000.)

10.53 Settlement agreement dated February 11, 2000 between Penn National Gaming, Inc. and Amtote International, Inc. (Incorporated by reference to the Company's Form 10-K, dated March 20, 2000.)

10.54 Thoroughbred horsemen letter dated February 24, 2000 between PNGI Charles Town Gaming, LLC and the Charles Town thoroughbred horsemen. (Incorporated by reference to the Company's Form 10-K, dated March 20, 2000.)

10.55 Agreement dated March 7, 2000 between Penn National Gaming, Inc. and Trackpower, Inc. and eBet Limited, Inc. (Incorporated by reference to the Company's Form 10-K, dated March 20, 2000.)

10.56 Purchase Agreement dated March 15, 2000, between PNGI Charles Town Gaming, LLC and BDC Group. (Incorporated by reference to the Company's Form 10-Q, dated May 12, 2000.)

10.57 Credit Agreement among Penn National Gaming, Inc., as Borrower, the Several Lenders from time to time parties hereto, Lehman Brothers Inc., as Lead Arranger and Book- Running Manager, CIBC World Markets Corp., as Co-Lead Arranger and Co-Book Running Manager, Lehman Commercial Paper Inc., as Syndication Agent, Canadian Imperial Bank of Commerce, as Administrative Agent, and The CIT Group/Equipment Financing, Inc., First Union National Bank and Wells Fargo Bank, N.A., as Documentation Agents, dated as of August 8, 2000. (Incorporated by reference to the Company's Form 8-K, dated August 8, 2000.)

10.58 Amendment No. 1 dated as of October 4, 2000 to Credit Agreement among Penn National Gaming, Inc., as Borrower, the Lenders under the Credit Agreement, Lehman Commercial Paper Inc., as syndication agent for the Lenders, and Canadian Imperial Bank of Commerce, as administrative agent for the Lenders. (Incorporated by reference as Exhibit 10.22a to the Company's Form 10-Q, dated March 31, 2001).

10.59 Amendment No. 2 dated as of April 5, 2001 to Credit Agreement among Penn National Gaming, Inc., as Borrower, the Lenders under the Credit Agreement, Lehman Commercial Paper Inc., as syndication agent for the Lenders, and Canadian Imperial Bank of Commerce, as administrative agent for the Lenders. (Incorporated by reference as Exhibit 10.23a to the Company's Form 10-Q, dated March 31, 2001).

10.60 Registration Rights Agreement dated as of March 12, 2001, by and among Penn National Gaming, Inc., certain of its subsidiaries, and Lehman Commercial Paper Inc. and CIBC World Markets Corp. (Incorporated by reference as Exhibit 10.24a to the Company's Form 10-Q, dated March 31, 2001).

10.61* Standard Form of Agreement dated January 11, 2001 between BSL, Inc. and Roy Anderson Corp. relating to Casino Magic Hotel, Phase 1.

10.62* Amendment No. 1 dated as of April 4, 2001 to Standard Form of Agreement between BSL, Inc. and Roy Anderson Corp. dated January 11, 2001 relating to Casino Magic Hotel, Phase 1.

10.63*	Standard Form of Agreement dated October 2001 between Penn National Gaming of West Virginia and Howard Shockoy & Sons, Inc. relating to Charlestown Races Parking Garage and Entertainment facility.
21*	Subsidiaries of the Registrant.
23.1*	Consent of BDO Seidman, LLP.
24.1*	Power of attorney (included on the signature page to this Form 10-K report).

Compensation plans and arrangements for executives and others.

* Filed herewith.

+ Confidential treatment has been requested as to certain portions of this exhibit. The omitted portions have been separately filed with the Securities and Exchange Commission.

QuickLinks

EXHIBIT 3.4

Microfilm Number Filed with the Department of State on JULY 23, 2001

Entity Number

SECRETARY OF THE COMMONWEALTH

ARTICLES OF AMENDMENT-DOMESTIC BUSINESS CORPORATION
DSCB:15-1915 (Rev 91)

In compliance with the requirements of 15 Pa.C.S. ss.1915 (relating to articles of amendment), the undersigned business corporation, desiring to amend its Articles, hereby states that:

1. The NAME of the corporation is: PENN NATIONAL GAMING, INC.

2. The (a) ADDRESS of this corporation's current registered office in this Commonwealth or (b) NAME of its commercial registered office provider and the county of venue is (the Department is hereby authorized to correct the following information to conform to the records of the Department):

(a) WYOMISSING PROFESSIONAL CENTER, 825 BERKSHIRE BOULEVARD, SUITE 203,
Number and Street

WYOMISSING, PA 19610 BERKS
City State Zip County

(b)
Name of Commercial Registered Office Provider County

For a corporation represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the corporation is located for venue and official publication purposes.

3. The STATUTE by or under which it was incorporated is:
PENNSYLVANIA BUSINESS CORPORATION LAW, AS AMENDED

4. The DATE of its incorporation is: DECEMBER 16, 1982

5. (CHECK, AND IF APPROPRIATE COMPLETE, ONE OF THE FOLLOWING):

|X| The amendment shall be effective UPON FILING these Articles of Amendment in the Department of State.

__ The amendment shall be effective on: _____at _____
Date Hour

6. (CHECK ONE OF THE FOLLOWING):

|X| The amendment was adopted by the shareholders (or members) pursuant to 15 Pa.C.S. ss.1914(a) and 1914(b).

__ The amendment was adopted by the board of directors pursuant to 15 Pa.C.S. ss.1914(c).

7. (CHECK, AND IF APPROPRIATE COMPLETE, ONE OF THE FOLLOWING):

|X| The amendment adopted by the corporation, set forth in full, is as follows:

"4. The aggregate number of shares which this Corporation shall have the authority to issue is:
(a) Two hundred million (200,000,000) shares of Common stock with a par value of $.01 per share; and"

__ The amendment adopted by the corporation as set forth in full in EXHIBIT A attached hereto and made a part hereof.

8. (CHECK IF THE AMENDMENT RESTATES THE ARTICLES):

__ The restated Articles of Incorporation supersede the original Articles and all amendments thereto.

IN TESTIMONY WHEREOF, the undersigned corporation has caused these Articles of Amendment to be signed by a duly authorized officer thereof this 23rd day of July 2001.

PENN NATIONAL GAMING, INC.

(Name of Corporation)

BY: /s/ ROBERT S. IPPOLITO

Robert S. Ippolito
Secretary and Treasurer

(CHANGES)
DOCKETING STATEMENT DSCB:15-134B (Rev 91)

BUREAU USE ONLY:
____REVENUE ____LABOR & INDUSTRY
OTHER_____

FILING FEE: NONE

FILECODE_____
FILED DATE_____
MICROFILM NUMBER_____

This form (file in triplicate) and all accompanying documents shall be mailed to:
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
CORPORATION BUREAU
308 NORTH OFFICE BUILDING
HARRISBURG, PA 17120-0029

PART I. COMPLETE FOR EACH FILING:

Current name of entity or registrant affected by the submittal to which this statement relates: (survivor or new corporation if merger or consolidation)
PENN NATIONAL GAMING, INC.

Entity number, if known: 2980352 NOTE: ENTITY NUMBER is the computer index number assigned to an entity upon initial filing in the Department of State.

Incorporation/qualification date in Pa.: 12/16/82 State of Incorporation: PA

Federal Identification Number: 23-2234473

Specified effective date, if any: UPON FILING

PART II. COMPLETE FOR EACH FILING: This statement is being submitted with (check proper box):

|X| ARTICLES OF AMENDMENT: complete Section A only

___ AMENDED CERTIFICATE OF AUTHORITY: complete Section A only

___ ARTICLES OF MERGER: complete Section B

___ ARTICLES OF CONSOLIDATION: complete Section C

___ ARTICLES OF DIVISION: complete Section D

___ ARTICLES OF CONVERSION: complete Section A and E only

___ STATEMENT OF MERGER, CONSOLIDATION OR DIVISION: complete Section B, C or D

___ STATEMENT OF CORRECTION: complete Section A only

___ STATEMENT OF TERMINATION: complete Section H

___ STATEMENT OF REVIVAL: complete Section G

___ DISSOLUTION BY SHAREHOLDERS OR INCORPORATORS BEFORE COMMENCEMENT OF BUSINESS: complete Section F only

___ AMENDMENT OF CERTIFICATE OF LIMITED PARTNERSHIP: complete Section A only

PART III. COMPLETE IF APPROPRIATE: The delayed effective date of the accompanying submittal is:

Month day year hour, if any

|X| SECTION A. CHANGES TO BE MADE TO THE ENTITY NAMED IN PART I: (Check box/boxes which pertain)

__ Name:

__ Registered Office:

Number & street/RD number & box number

City State Zip County

__ Purpose:

|X| Stock: aggregate number of shares authorized
200,000,000 Common, par value $.01

(attach additional provisions, if any)

__ Term of Existence:

Other:

__ SECTION B. MERGER (Complete Section A if any changes to survivor corporation):

MERGING CORPORATIONS ARE: (List ONLY the MERGING CORPORATIONS-SURVIVOR IS LISTED IN PART I)

1. Name:

Entity Number, if known:___ Inc./quali. date in Pa.:___
State of Incorporation:___

2. Name:

Entity Number, if known:___ Inc./quali. date in Pa.:___
State of Incorporation:___

Attach sheet containing above corporate information if there are additional merging corporations.

__ SECTION C. CONSOLIDATION (NEW corporation information should be completed in Part I. Also, complete and attach DOCKETING STATEMENT DSCB:15-134A for the NEW corporation formed.)

CONSOLIDATING CORPORATIONS ARE:

1. Name:

Entity Number, if known:___ Inc./quali. date in Pa.:___
State of Incorporation:___

2. Name:

Entity Number, if known:___ Inc./quali. date in Pa.:___
State of Incorporation:___

Attach sheet containing above corporate information if there are additional consolidating corporations.

__ SECTION D. DIVISION (Forming NEW corporation(s) named below. Also, complete and attach DOCKETING STATEMENT DSCB:15-134A for EACH new corporation formed by division.)

_____ 1. Name:_____
Entity Number
_____ 2. Name:_____
Entity Number

Attach sheet if there are additional corporations to be named.

CHECK ONE:

__ Corporation named in Part I survives. (Any changes, complete Section A)

__ Corporation named in Part I does not survive.

__ SECTION E. CONVERSION (Complete Section A)

CHECK ONE:

__ Converted from nonprofit to profit

__ Converted from profit to nonprofit

__ SECTION F. DISSOLVED BY SHAREHOLDERS OR INCORPORATORS BEFORE COMMENCEMENT OF BUSINESS

__ SECTION G. STATEMENT OF REVIVAL Corporation named in Part I hereby revives its charter or articles which were forfeited by Proclamation or expired. (Complete Section A if any changes have been made to the revived corporation.)

__ SECTION H. STATEMENT OF TERMINATION

_____ filed in the Department of State on _____
(type of filing made) month day year hour, if any

is/are hereby terminated.

If merger, consolidation or division, list all corporations involved, other than that listed in Part I:

_____ 1. Name:_____
Entity Number

_____ 2. Name:_____
Entity Number

Attach sheet containing above information if there are additional corporations involved.

Exhibit 10.6

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT, dated as of the _____ day of February, 2001 by and between Penn National Gaming, Inc., a Pennsylvania corporation with its principal offices at Wyomissing Professional Center, 825 Berkshire Boulevard, Suite 203, Wyomissing, Pennsylvania 19610 (the "Company") and Kevin DeSanctis, an individual residing at 2526 Montclaire Circle, Weston, Florida 33327 (the "Executive").

In consideration of their mutual promises and covenants set forth herein, and intending to be legally bound hereby, Company and Executive agree as follows:

1. EMPLOYMENT. Company hereby employs Executive and Executive accepts such employment on the terms and conditions hereinafter set forth.

2. TERM. The term of this Agreement shall begin on February 15, 2001 and shall terminate on February 14, 2003 unless sooner terminated in accordance with Paragraph 12 hereof.

3. COMPENSATION. For all services rendered by Executive under this Agreement, Company agrees to pay Executive a salary at the annual rate of $500,000 ("Annual Salary"), payable in equal biweekly installments. Executive shall also participate in the Company's Senior Management Incentive Compensation Plan as the same may be adopted and amended, from time to time, by the Board of Directors of Company including, but not limited to, being eligible for individual awards and incentive stock options (initially options to purchase 150,000 shares of Company's common stock in accordance with Company's Incentive Stock Option Plan) which might be granted pursuant to the terms and provisions of any such Plan.

4. DUTIES.

4.1 Until such time as Executive receives all necessary regulatory licenses and approvals, Executive is engaged hereunder as an employee of Company, reporting to the Chairman of the Board of Directors of Company (the "Chairman") with such duties as the Chairman shall determine but which shall not include any duties with respect to or authority over any aspect of Company's gaming operations nor shall any employee of Company's gaming operations report to Executive. From and after such time as Executive receives all necessary regulatory licenses and approvals, he shall be and become President and Chief Operating Officer of Company, and he agrees thereafter to perform the duties and services incident to that position, or such other or further duties and services of a similar nature as may be reasonably required of him by the Chairman. Executive agrees to serve as an officer of Company or any subsidiary of Company or affiliated company without additional compensation.

4.2 Executive shall have such power and authority as shall reasonably be required to enable Executive to perform his duties hereunder in an efficient manner, provided, that in exercising such power and authority and performing such duties, Executive shall at all times be subject to the supervision of the Chairman.

4.3 Executive shall devote his full business time, attention, energies and best efforts to the performance of his duties hereunder and to the promotion of the business and interests of Company and of any of its corporate subsidiaries or affiliated companies. The foregoing shall not be construed, however, as preventing Executive from investing his assets in such form or manner as will not require services on the part of Executive in the operations of the business in which such investment is made and provided such business is not in competition with Company or, if in competition, such business has a class of securities registered under the Securities Exchange Act of 1934 and the interest of Executive therein is solely that of an investor owning not more than 3% of any class of the outstanding equity securities of such business. Executive may also act as a director of or engage in other activities for any charitable, educational or other non-profit institution, so long as such activities do not materially interfere with the performance of Executive's duties hereunder.

5. BENEFITS. During the term of this Agreement, Executive shall be entitled to participate in such medical insurance, retirement programs, and other fringe benefit programs of Company now or hereafter existing to the extent and on the same terms and conditions as are accorded to other executive officers of Company, provided, however, that nothing herein shall be deemed to require grants or awards to Executive under any benefit plans which provide for awards or grants at the discretion of the Board of Directors or of any committee or administrator. Nothing contained in this Agreement shall require Company to establish, maintain or continue any of the benefits already in existence or hereafter adopted for employees of

Company, nor restrict the right of Company to amend, modify or terminate such benefit programs in a manner which does not discriminate against Executive as compared to other executive employees of Company. Company shall maintain life insurance on the life of Executive in the amount of One Million Dollars, to the extent it can be issued at standard rates, and Executive may name the beneficiary of such policy.

6. VACATIONS. Executive shall be entitled in each calendar year to four weeks of vacation time. Each vacation shall be taken by Executive at such time or times as agreed upon by the Chairman and Executive, and any portion of Executive's allowable vacation time not used during the calendar year shall be forfeited.

7. AUTOMOBILE. During the term of this Agreement, Company shall provide Executive with an automobile of such make and model consistent with Company's policy for its provision of automobiles to executive officers. Company shall reimburse Executive for all expenses arising from or related to the maintenance, repair and daily operation of such automobile in carrying out Executive's duties hereunder, including but not limited to, fuel, service and insurance costs, provided that Executive presents vouchers evidencing such expenses as required by Company.

8. REIMBURSEMENT OF BUSINESS EXPENSES. Company will pay, or reimburse Executive for, all ordinary and reasonable out-of-pocket business expenses incurred by Executive in connection with his performance of services hereunder, in accordance with Company's expense authorization and approval procedures then in effect, and provided Executive submits detailed vouchers and other records reasonably requested by Company in support of the amount and nature of the expenses.

9. RELOCATION EXPENSES. From the date hereof until not later than August 31, 2001, Company shall reimburse Executive for all temporary housing expenses in the Wyomissing area until Executive moves his family to such area. Company shall also pay: (a) the cost, including airfare, for two family trips to the Wyomissing area for the purpose of obtaining housing in the Wyomissing area; (b) during the period ending not later than August 31, 2001, Executive's transportation expenses between his home in Weston, Florida and Wyomissing; and (c) all standard closing costs (but not including the repayment of any mortgages or other liens on such house) for the sale of Executive's house in Weston, Florida in an amount equal to the difference, if any, between $600,000 and the sale price net of such standard closing costs (the "Net Sale Price"). In addition, if Executive has not sold or leased his Weston, Florida house prior to the time he moves his family to the Wyomissing area, Company will pay the mortgage, taxes and property insurance for this house until the house is sold or leased; provided, however, Company may purchase the house from Executive or require Executive to sell the house, in either case, so long as the Net Sale Price is not less than $600,000.

10. DISABILITY OF THE EXECUTIVE. If the Executive is unable to perform his services by reason of incapacity, either mental or physical, for a period aggregating ninety days in any twelve month period, Company shall have the option of reducing, in whole or in part, the Annual Salary or other compensation thereafter payable to Executive pursuant to the terms of this Agreement during the continued period of illness or incapacity or of declaring at any time thereafter, upon thirty days notice, that Executive's employment hereunder is terminated. In the event this Agreement is terminated because of disability, Company shall pay all sums owed to Executive as Annual Salary and reimbursement which would otherwise be payable to Executive up to the date of Executive's termination and upon such payment all obligations of the Company hereunder shall cease. The payments due hereunder shall be made within thirty days after the date of termination. Company agrees to provide Executive, during the term of this Agreement, at no cost to Executive, long-term disability insurance coverage consistent with the present coverage provided by Company, if any.

11. DEATH. In the event of the death of Executive during the term of this Agreement, this Agreement shall terminate effective as of the date of Executive's death, and Company shall not have any further obligation or liability hereunder except that Company shall pay to Executive's designated beneficiary or, if none, his estate (i) the portion, if any, of the Executive's Annual Salary, and any reimbursements, for the period up to Executive's date of death which remains unpaid, and (ii) an amount equal to fifty percent of Executive's Annual Salary in effect at the time of his death, which death benefit shall be in addition to any life

insurance carried or paid for by Company on the life of Executive.

12. TERMINATION OF EMPLOYMENT.

12.1 This Agreement shall terminate upon the occurrence of the first to occur of the following events:

12.1.1 The expiration of the term set forth in Paragraph 2 hereof, or of any renewal or extension thereof;

12.1.2 Immediately upon Executive's death;

12.1.3 At the election of Company (A) if Executive becomes disabled as set forth in Paragraph 10 hereof, or (B) if Executive's application for any necessary regulatory license or approval is rejected due to unsuitability or Executive's license issued by any gaming regulatory commission or similar agency is terminated or suspended for any reason whatsoever or Company's Compliance Committee determines at any time that Executive's continued employment may adversely affect the license status of Company or any of its affiliates with any gaming regulatory agency, board or commission, or (C) if Executive is convicted of committing a felony, or (D) if Executive willfully commits a material breach of any Company policy applying to the conduct of Company's executive employees and does not cure such breach or failure within thirty days after the giving of written notice thereof to Executive by the Chairman; or

12.1.4 Immediately upon Company discontinuing its gaming operations. The merger, consolidation or sale of the gaming operations of Company shall not be deemed a discontinuance of the gaming operations of Company for purposes of this provision.

12.2 In the event Executive shall voluntarily terminate his employment under this Agreement prior to the expiration of the original term of this Agreement or any extension or renewal hereof, or shall be discharged under paragraph 12.1.3 hereof, Executive shall be entitled to receive his Annual Salary and any reimbursements due to the date of termination of his employment, but the Company shall not have any further obligations or liability under this Agreement. In the event Company shall terminate Executive's employment for any reason other than as set forth in the foregoing subsections of this Section 12, or Executive's employment terminates after a Change in Control (as defined in Company's Amended and Restated 1994 Stock Option Plan, as further amended from time to time), and thereafter Executive's duties hereunder are diminished in any material way, Company shall continue to pay Executive's Annual Salary and benefits provided pursuant to Section 5 above for the balance of the Term hereof and Company shall not have any further obligations or liability to Executive on account of or with respect to any such termination.

13. RESTRICTIONS.

13.1 Executive recognizes and acknowledges that he will have access to certain confidential information of Company and that such information constitutes valuable, special and unique property of Company. Executive agrees that he will not, for any reason or purpose whatsoever, during his employment by Company and for a period of twenty four months thereafter, disclose any of such confidential information to any party, and that he will keep inviolate and secret all information or knowledge which he has access to by virtue of his employment hereunder, except as necessary in the ordinary course of performing his duties hereunder.

13.2 Executive further agrees that during his employment by Company and for a period of twenty four months thereafter, Executive shall not, without the prior written consent of Company, directly or indirectly, solicit the employment, consulting or other services of any other employee of Company or any of its subsidiaries or affiliated companies, or otherwise induce any of such employees to leave such employment or to breach an employment agreement with any of them.

13.3 Executive acknowledges and agrees that Executive's services hereunder are special, unique, unusual and extraordinary giving them particular value, the loss of which cannot reasonably or adequately be compensated for by damages, and that the restrictions contained in this Section 13 are, in view of the nature of the business of Company, reasonable and necessary to protect the legitimate interests of Company, and that any violation of any provisions of this Section 13 will result in irreparable injury to Company. Executive also acknowledges that Company shall be entitled to temporary and permanent injunctive relief, without the necessity of proving actual damages, and to an equitable accounting of all earnings, profits and other benefits arising from any such violation, which rights shall be cumulative and in addition to any other rights or remedies to which Company may be entitled. In the event of any such violation, Company shall be entitled to commence an action for temporary and permanent injunctive relief and other equitable relief in any court of competent jurisdiction and Executive further irrevocably submits to the jurisdiction of any Pennsylvania court or Federal court sitting in the Eastern District of Pennsylvania over any suit, action or proceeding arising out of or relating to this Section 13. The Executive hereby waives, to the fullest extent

permitted by law, any objection that he may now or hereafter have to such jurisdiction or to the venue of any such suit, action or proceeding brought in such a court and any claim that such suit, action or proceeding has been brought in any inconvenient forum. Effective service of process may be made upon the Executive by mail under the notice provisions contained in Section 14 hereof.

13.4 The provisions of this Section 13 shall survive the termination of this Agreement.

13.5 The provisions of Section 13 shall be considered severable and the invalidity or unenforceability of any part thereof shall not affect the validity or enforceability of the remaining parts or portions thereof.

14. NOTICES. All notices, demands and requests of any kind which either party may be required or may desire to serve upon the other party hereto in connection with this Agreement shall be delivered only by courier or other means of personal service, which provides written verification of receipt or by registered or certified mail return receipt requested (the "Notice"). Any such Notice or demand so delivered by registered or certified mail or courier shall be deposited in the United States mail, or in the case of courier, deposited with the courier, with postage thereon fully prepaid. All Notices shall be addressed to the parties to be served as follows:

If to Company:	If to Executive:
Wyomissing Professional Center 825 Berkshire Boulevard, Suite 200 Wyomissing, Pennsylvania 19610	Kevin DeSanctis 2526 Montclaire Circle Weston, Florida 33327

ATTENTION: Chairman

Either of the parties hereto may at any time and from time to time change the address to which notice shall be sent hereunder by notice to the other party given under this Section. All such notices, requests, demands, and other communications shall be effective when received at the respective address set forth above or as then in effect pursuant to any such change.

15. ASSIGNMENT. Executive may not assign any rights (other than the right to receive income hereunder and upon death to his estate) under this Agreement without the prior written consent of Company. If Company, or any entity resulting from any merger or consolidation with or into Company, is merged with or consolidated into or with any other entity or entities, or if substantially all of the assets of any of the aforementioned entities is sold or otherwise transferred to another entity, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the continuing entity in, or the entity resulting from, such merger or consolidation, or the entity to which such assets are sold or transferred.

16. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the internal laws (and not the law of conflicts) of the Commonwealth of Pennsylvania.

17. ENTIRE AGREEMENT; MODIFICATION. This Agreement sets forth the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes and is instead of all other employment arrangements between Executive and Company. This Agreement cannot be changed, modified or terminated except upon written amendment duly

executed by the parties hereto.

18. REMEDIES CUMULATIVE; NO WAIVER. No remedy conferred upon Company by this Agreement is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission by Company in exercising any right, remedy or power hereunder or existing at law or in equity shall be construed as a waiver thereof, and any such right, remedy or power may be exercised by Company from time to time and as often as may be deemed expedient or necessary by Company in its sole discretion.

19. ENFORCEABILITY. If any provision of this Agreement shall be invalid or unenforceable, in whole or in part, then such provision shall be deemed to be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, or shall be deemed excised from this Agreement, as the case may require, and this Agreement shall be construed and enforced to the maximum extent permitted by law, as if such provision had been

originally incorporated herein as so modified or restricted, or as if such provision had not been originally incorporated herein, as the case may be.

20. REGULATORY COMPLIANCE. The terms and provisions hereof shall be conditioned on and subject to compliance with all laws, rules and regulations of all jurisdictions, or agencies, boards or commissions thereof, having regulatory jurisdiction over the employment or activities of Executive hereunder.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the date first above written.

PENN NATIONAL GAMING, INC.

BY:

Peter M. Carlino, Chairman

Witness:

- ---

Kevin DeSanctis

Exhibit 10.7

EMPLOYMENT AGREEMENT

EMPLOYMENT AGREEMENT, dated as of the 30th day of July, 2001, between Penn National Gaming, Inc., a Pennsylvania corporation with its principal offices at 825 Berkshire Boulevard, Wyomissing, PA, ("Company") and William Clifford ("Executive"), 122 Oak Hill Lane, Wyomissing, PA 19610.

BACKGROUND

From and after July 30, 2001, Company wishes to employ Executive and Executive wishes to enter into the employ of Company on the terms and conditions contained in this Employment Agreement.

The parties are entering into this Employment Agreement for the purpose of setting forth the terms and conditions under which Company agrees to employ Executive and Executive agrees to accept such employment.

There are no other agreements either oral or in writing between the parties.

NOW, THEREFORE, in consideration of the foregoing and the mutual premises and covenants contained herein, Company and Executive agree as follows:

1. Employment.

Company hereby employs Executive and Executive accepts such employment on the terms and conditions hereinafter set forth.

2. Term.

The term ("Term") of this Employment Agreement shall begin on July 30, 2001, (the "Commencement Date") and shall terminate at 11:59 PM on July 30, 2003, provided that, no earlier than 90 days, but not later than 60 days prior to that date, either party gives written notice to the other that it or he desires the Agreement to terminate. Absent such notice, the Agreement shall renew for one (1) year periods. Said additional periods are governed by these same notice requirements.

In the event that the Company, without cause, elects not to continue this Agreement beyond the initial term or elects, without cause, not to offer an "at will" employment relationship, Executive will receive, on the date of termination, a severance allowance in an amount equal to the full amount of Base Salary and health insurance benefits that would be due to Executive for a period of six (6) months.

3. Service to Company.

3.1 Executive's Responsibilities. On the terms and subject to the conditions set forth in this Employment Agreement, the Company shall employ Executive to serve as Chief Financial Officer of the Company. Executive shall report to the President/Chief Operating Officer of the Company and perform all duties customarily attendant to the position of Chief Financial Officer of the Company. Executive shall perform such services and duties commensurate with Executive's position as may from time to time be reasonably prescribed by the President/COO. It is understood and agreed that the President/COO may prescribe additional duties and responsibilities for the Executive that may expand the scope of Executive's duties and responsibilities and may result in the Executive supervising more personnel than the Executive presently is supervising.

3.2 Full Time. Executive shall devote his full business time, attention, energies and best efforts to the performance of his duties hereunder and to the promotion of the business and interests of the Company. The foregoing shall not be construed, however, as preventing Executive from serving on the board of philanthropic organizations (so long as his service does not materially interfere with his duties hereunder) or investing his assets in such form or manner as will not require services on the part of Executive in the operations of the business in which such investment is made. If such business has a class of securities registered under the Securities Exchange Act of 1934 then the interest of Executive therein is solely that of an investor owning not more than 3% of any class of the outstanding equity securities of such business.

4. Financial Matters.

4.1 Base Salary. Executive shall be paid a salary at the rate of $275,000 per year (the "Base Salary"). The Base Salary shall be paid in installments in arrears in accordance with Company's regular payroll practices. Company may, in its discretion, increase Executive's Base Salary and Executive's other compensation provided for herein, upon the annual performance review of the Executive to be completed by the anniversary date of the Commencement Date hereof.

4.2 Bonus. In addition to the Base Salary, Company may pay to Executive a bonus of up to 50% of his Base Salary based upon Executive's performance keyed to standards established by Company, and at such times as the President/COO may, from time to time, determine in recognition of Executive's exemplary services.

4.3 Stock Options. As additional consideration for Executive entering into this Employment Agreement, Penn will issue options pursuant to its 1994 Stock Option Plan for fifty thousand (50,000) shares of Penn National Gaming, Inc. common stock at an exercise price of $18.95 per share, which is the closing on July 30, 2001, Executives first day of employment by Company. Such options will vest as follows:

i. 25% on the first anniversary of the date of grant

ii. 25% on the second anniversary of the date of grant
iii. 25% on the third anniversary of the date of grant
iv. 25% on the fourth anniversary of the date of grant

4.4. Fringe Benefits. Executive shall be entitled to participate in all insurance, and other fringe benefit programs of Company to the extent and on the same terms and conditions as are accorded to other similarly situated executives of Company, provided, however, that nothing herein shall be deemed to require grants and awards to Executive under any benefit plans which provide for awards or grants at the discretion of the Board of Directors of the Company or of any committee thereof. Executive shall be entitled in each calendar year to four weeks paid vacation, prorated for 2001, to be taken by the Executive at such time or times as agreed upon by the Company and Executive.

4.5 Business Expenses. Company will pay, or reimburse the Executive for, all ordinary and reasonable out-of-pocket business expenses incurred by Executive in connection with his performance of services hereunder during the Term in accordance with Company's expense authorization and approval procedures then in effect.

4.6 Relocation Expenses. Company will pay, or reimburse the Executive for moving expenses related to his and his immediate family's relocation. Such payment/reimbursement will be based upon Penn National Gaming, Inc.'s "Relocation Policy" dated June 2001.

5. Death or Total Disability of Executive.

5.1 Death. In the event of the death of this Executive during the Term of this Employment Agreement, this Employment Agreement shall terminate effective as of the date of Executive's death, and Company shall not have any further obligation or liability hereunder except that Company shall pay to Executive's designated beneficiary or, if none, his estate the portion, if any, of Executive's Base Salary for the period up to Executive's date of death which remains unpaid and the amount of any unreimbursed expenses subject to the requirements of subsection 4.5 above.

5.2 Total Disability. In the event of the total disability of Executive during the term of this Employment Agreement, this Employment Agreement shall terminate effective as of the date of Executive's total disability, and Company shall pay to Executive the portion, if any, of Executive's Base Salary for the period up to Executive's date of disability which remains unpaid and the amount of any unreimbursed expenses subject to the requirements of subsection 4.5 above. The term "Total Disability" when used herein, shall have the definition set forth in Company's Long Term Disability Insurance Policy in effect at the time of any such determination.

6. Termination of Employment by Company for Cause.

In addition to termination pursuant to Section 5, Company may discharge Executive and thereby terminate Executive's employment hereunder for the following reasons (for "Cause"): (i) habitual intoxication; (ii) drug addiction; (iii) conviction of a felony; (iv) 15 days after written notice of continued insubordination or material violation of any rule or regulation that may be established by Company from time to time for the conduct of Company's business; (v) misappropriation of corporate funds or other acts of dishonesty; or (vi) loss by Executive of any casino or gaming license or registration or finding of suitability required in the conduct of the performance of Executive's duties hereunder.

In the event that Company shall discharge Executive pursuant to Section 6, Company shall not have any further obligations or liability to Executive under this Employment Agreement, except that Company shall pay to Executive the portion, if any, of Executive's Base Salary for the period up to Executive's date of discharge which remains unpaid and the amount of any unreimbursed expenses subject to the requirements of subsection 4.5 above.

7. Termination of Employment for Non-Performance.

Company will make periodic evaluations of Executive's work performance and communicate the results of these evaluations to Executive, normally verbally. In the event that Executive's work performance is held to be substandard/unacceptable, Employer will communicate this in writing to Executive, along with specific recommendations as to how Executive can improve his/her performance to an acceptable level. A reassessment of Executive's performance will occur thirty (30) days following the date of the written notice. If the performance improvements requested by Company have occurred, Executive will be notified, in writing, that his/her performance is perceived by Company to be acceptable. If the performance improvements requested by Employer have not occurred during the initial thirty (30) day period, Company will notify Executive, in writing, of this fact, along with specific recommendations as to how Executive's performance can be brought to an acceptable level. Such written notice will include a last and final warning that failure to achieve an acceptable performance level during the next thirty (30) days will result in his termination. A reassessment of Executive's performance will occur thirty (30) days following the date of said second written notice. If the performance improvements requested by Employer have occurred, Executive will be notified, in writing, that his performance is perceived by Employer to be acceptable. If the performance improvements requested by Company have not occurred, Executive will be notified in writing of his termination, along with the performance related reasons therefor.

In the event that Company shall discharge Executive pursuant to Section 7, Company shall not have any further obligations or liability to Executive under this Employment Agreement, except that Company shall pay to Executive the portion, if any, of Executive's Base Salary for the period up to the Executive's date of discharge which remains unpaid and the amount of any unreimbursed expenses subject to the requirements of Subsection 4.5 above.

8. Non-Solicitation.

Executive agrees that during the entire Term of this Agreement, and for one year after Executive ceases to be employed by Company for any reason whatsoever, Executive shall not directly or indirectly solicit for employment and will not hire during any period for which Company is paying severance or in any other fashion hire any of the employees of Company or any of its affiliated companies.

9. Non-Compete.

Executive agrees that during the term of employment by Company, and for any period following employment by Company during which Executive is receiving severance payments from Company, employee will not, directly or indirectly, individually, or as a partner, stockholder, officer, director, principal, agent, employee, or in any other capacity or relation, enter into any business or employment in competition with the employer.

10. Notices.

All notices, requests, demands, claims, and other communications hereunder will be in writing and addressed to the intended recipient as set forth below. Any party hereto shall give any notice, request, demand, claim or other communication hereunder by registered or certified mail, return receipt requested, or delivery by hand or any nationally recognized courier service that requires a return receipt or signature for delivery. Any party hereto may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other parties hereto notice in the manner herein set forth.

If to the Company:

Joseph A. Lashinger, Jr., Esq.
Vice President & General
Counsel
Penn National Gaming, Inc.
825 Berkshire Blvd., Suite 200
Wyomissing, PA 19610

If to Executive:

William Clifford
122 Oak Hill Lane
Wyomissing, PA 19610

11. No Conflicts of Interest.

Executive agrees that throughout the period of Executive's employment hereunder, Executive will not perform any activities or services, or accept other employment relationship that would interfere with or present a conflict of interest concerning Executive's employment with the Company. Executive agrees and acknowledges that Executive's employment by the Company is conditioned upon Executive adhering to and complying with the business practices and requirements of ethical conduct set forth in writing from time to time by the Company in its employee manual or similar publication.

12. Confidentiality.

Executive recognizes that Company and its affiliated companies has and will continue to develop business strategies, marketing plans, customer lists and other related business information for its customers. Company considers this information as its trade secrets. Executive agrees that he will not, directly or indirectly, during the course of his employment and forever thereafter, upon termination of this employment for any reason whatsoever, divulge to any other person, firm or corporation, without Company's consent, any information acquired by Executive by any means whatsoever during the employment by Company, relating to or concerning any phase of Company's operations.

13. Document Surrender.

Executive, at the expiration of his employment for any reason whatsoever, shall surrender and deliver to employer all documents, correspondence and any other information, of any type whatsoever, from Company or any of its agents, servants, employees, suppliers, and existing or potential customers, that come into employee's possession by any means whatsoever, during the course of employment.

14. Governing Law, Venue and Jurisdiction.

This Employment Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. This Employment Agreement shall be enforceable in the Court of Common Pleas of the County of Berks, Pennsylvania. Should federal jurisdiction apply then venue shall be in the United States District Court, Eastern District of Pennsylvania.

15. Contents of Agreement: Amendment and Assignment.

This Employment Agreement sets forth the entire understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements or understandings between Executive and Company with respect to such subject matter. This Employment Agreement cannot be changed, modified or terminated except upon written amendment duly executed by the parties hereto. All of the terms and provisions of this Employment Agreement shall be binding

upon and inure to the benefit of and be enforceable by the respective heirs, representatives, successors and assigns of the parties hereto, including, but not limited to, any successor to the business of Company regardless of the forum of the transaction, except that the duties and responsibilities of Executive hereunder are of a personal nature and shall not be assignable in whole or in part by Executive.

IN WITNESS WHEREOF, this Employment Agreement has been executed by the parties on the date first above written.

Penn National Gaming, Inc.
a Pennsylvania Corporation

By: _____

Attest: _____
Kevin DeSanctis
President/COO

By: _____

Attest: _____
William Clifford
Executive

EXHIBIT 10.61

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR WHERE THE BASIS FOR PAYMENT IS THE COST OF THE WORK PLUS A FEE WITH A NEGOTIATED GUARANTEED MAXIMUM PRICE

AIA DOCUMENT A111 - 1997

1997 EDITION - ELECTRONIC FORMAT

- ---

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by The Associated General Contractors of America.

- ---

AGREEMENT made as of the day of in the year Two Thousand.
(IN WORDS, INDICATE DAY, MONTH AND YEAR)

BETWEEN the Owner:
(NAME, ADDRESS AND OTHER INFORMATION)
BSL, Inc.
711 Casino Magic Drive
Bay St. Louis, MS 39520

and the Contractor:
(Name, address and other information)
Roy Anderson Corp
P.O. Box 2
Gulfport, MS 39502

The Project is:
(NAME AND LOCATION)
Casino Magic Hotel, Phase I
Bay St. Louis, MS

The Architect is:
(NAME, ADDRESS AND OTHER INFORMATION)
Urban Design Group, Inc.
2410 Paces Ferry Road, Suite 270
Atlanta, GA 30339

The Owner and Contractor agree as follows.

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. See Contractor's Scope Summary, GMP Estimate with Allowances and Schedule, attached hereto as Exhibit "B" and the Renovation Scope, attached hereto as Exhibit "G".

ARTICLE 3 RELATIONSHIP OF THE PARTIES

3.1 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the

interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

Insert A: 3.2 Contractor acknowledges that is has carefully examined the location, accessibility, and general character of the site of the Work and all existing buildings on site. The Contractor shall exercise special care in executing subsurface work in the proximity of known subsurface utilities, improvements and easements. No oral agreement or conversation with any officer, agent or employee of Owner either before or after the execution of the Agreement shall affect or modify any of the terms or obligations herein contained.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4.1 The date of commencement of the Work shall be the date Owner execution of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner. However, the only Work to commence immediately shall be the Work (the "Renovation Work") set forth in the Renovation Scope, attached hereto as Exhibit "G". All other Work shall commence upon a notice to proceed issued by Owner (the "Construction Notice"). (INSERT THE DATE OF COMMENCEMENT, IF IT DIFFERS FROM THE DATE OF THIS AGREEMENT OR, IF APPLICABLE, STATE THAT THE DATE WILL BE FIXED IN A NOTICE TO PROCEED.)

If, prior to commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows: N/A

4.2 The Contract Time shall be measured from the date of commencement for the Renovation Work, and from the date of the Construction Notice for all other Work (Work other than Renovation Work is referred to as "Expansion Work").

4.3 The Contractor shall achieve Substantial Completion of the Renovation Work not later than the date established in Amendment No. 1.

(INSERT NUMBER OF CALENDAR DAYS. ALTERNATIVELY, A CALENDAR DATE MAY BE USED WHEN COORDINATED WITH THE DATE OF COMMENCEMENT. UNLESS STATED ELSEWHERE IN THE CONTRACT DOCUMENTS, INSERT ANY REQUIREMENTS FOR EARLIER SUBSTANTIAL COMPLETION OF CERTAIN PORTIONS OF THE WORK.)

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(INSERT PROVISIONS, IF ANY, FOR LIQUIDATED DAMAGES RELATING TO FAILURE TO COMPLETE ON TIME, OR FOR BONUS PAYMENTS FOR EARLY COMPLETION OF THE WORK.)

ARTICLE 5 BASIS FOR PAYMENT

5.1 CONTRACT SUM

5.1.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

5.1.2 The Contractor's Fee is: 4.25% of the Cost of Work plus the cost of materials purchased as defined in Exhibit "C".

(STATE A LUMP SUM, PERCENTAGE OF COST OF THE WORK OR OTHER PROVISION FOR DETERMINING THE CONTRACTOR'S FEE, AND DESCRIBE THE METHOD OF ADJUSTMENT OF THE CONTRACTOR'S FEE FOR CHANGES IN THE WORK.)

5.1.3 In the event of Change Orders, the Contractor's Fee shall be increased or decreased by 4.25% of the cost of the net increased or decreased Work.

5.2 GUARANTEED MAXIMUM PRICE

5.2.1 The Drawings and Specifications are not yet sufficiently complete for the purpose of preparing a Guaranteed Maximum Price. When the Drawings and Specifications are sufficiently complete, the Contractor shall propose a Guaranteed Maximum Price which shall be the sum of the estimated Cost of the Work and the Contractor's Fee.

(INSERT SPECIFIC PROVISIONS IF THE CONTRACTOR IS TO PARTICIPATE IN ANY SAVINGS.)

5.2.1.1 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Contractor shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials or finished or equipment, all of which, if required, shall be incorporated by Change Order.

5.2.1.2 The estimated Cost of the Work shall include Contractor's Contingency, a sum established by the Contractor for the Contractor's exclusive use to cover costs arising under Subparagraph 5.2.1.1 and other costs which are promptly reimbursable as Cost of the Work but not the basis for a Change Order.

5.2.2 The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include: (1) a list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal; (2) a list of allowances and a statement of their basis; (3) a list of the clarifications and assumptions made by the Contractor in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications; (4) the proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the fee that comprise the Guaranteed Maximum Price; (5) the date of Substantial Completion for the Renovation Work and the Expansion Work upon which the proposed Guaranteed Maximum Price is based; and (6) a schedule of the Construction Documents issuance dates upon which the dates of Substantial Completion are based.

(STATE THE NUMBERS OR OTHER IDENTIFICATION OF ACCEPTED ALTERNATES. IF DECISIONS ON OTHER ALTERNATES ARE TO BE MADE BY THE OWNER SUBSEQUENT TO THE EXECUTION OF THIS AGREEMENT, ATTACH A SCHEDULE OF SUCH OTHER ALTERNATES SHOWING THE AMOUNT FOR EACH AND THE DATE WHEN THE AMOUNT EXPIRES.)

5.2.3 The Contractor shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis or both.

5.2.4 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal or such acceptance and so notifies the Contractor, the Guaranteed Maximum Price proposal shall not be effective.

(IDENTIFY AND STATE THE AMOUNTS OF ANY ALLOWANCES, AND STATE WHETHER THEY INCLUDE LABOR, MATERIALS, OR BOTH.)

5.2.5 Prior to the Owner's acceptance of the Contractor's Guaranteed Maximum Price proposal and issuance of a Construction Notice, the Contractor shall not perform any work, generate any Contractor's Fee, nor incur any cost to be reimbursed as part of the Cost of the Work, except in connection with the Renovation Work.

5.2.6 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum price and its basis shall be set forth in Amendment No. 1, in the form attached hereto as Exhibit "H". The Guaranteed Maximum price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents and the dates of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

Insert B: 5.2.7 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed upon assumptions and clarifications contained in Amendment No. 1. Such revised Drawings and Specifications shall be furnished to the Contractor in accordance with schedules agreed to by the Owner, Architect, and Contractor. The Contractor shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed upon assumptions and clarifications.

Insert C: 5.2.8 The Guaranteed Maximum price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

Insert D: 5.2.9. The sum of the Cost of the Work and the Contractor's Fee are guaranteed by the Contractor not to exceed the amount provided in Amendment No. 1, subject to additions and deductions by changes in the Work as provided in the Contract documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

Insert E: 5.3 Shared savings shall be in accordance with Paragraph 14.6.2.

Insert F: 5.4 The work described in Exhibit "B" (Self Performed Work") shall be performed by Contractor.

ARTICLE 6 CHANGES IN THE WORK

6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Subparagraph 7.3.3 of AIA Document A201-1997.

6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Clause 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Subparagraph 5.1.2 of this Agreement.

6.4 If no specific provision is made in Paragraph 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment

provisions of Paragraph 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

7.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

7.2 LABOR COSTS

7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 14 the personnel to be included and whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 7.2.1 through 7.2.3.

7.3 SUBCONTRACT COSTS

7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction. Owner shall employ an Owner Purchase Program for all component materials as defined in Exhibit "C" other than in connection with the Renovation Work.

7.4.2 Costs of materials described in the preceding Subparagraph 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary

facilities, machinery, equipment, and hand tools not customarily owned by construction

workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

7.5.3 Costs of removal of debris from the site.

7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

7.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

7.6 MISCELLANEOUS COSTS

7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract: Contractor shall also employ a Contractor Controlled Insurance Program (CCIP) which will cover the Work of the subcontractors selected by the Contractor for the Expansion Work; Contractor need not employ the CCIP for the Renovation Work, but if it does so any cost of such CCIP in excess of costs which would otherwise have been incurred shall be borne by Contractor. The cost of the insurance, as identified in the subcontractor's bid proposal, shall serve as the basis of the Contractor's insurance billing to the Owner, except to the extent that the CCIP program is in force for the Expansion Work.

7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Subparagraph 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Subparagraph 7.7.3.

7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Subparagraph 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

7.6.6 Data processing costs related to the Work.

7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval; which approval shall not be unreasonably withheld.

7.6.9 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

7.7 OTHER COSTS AND EMERGENCIES

7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.6 of AIA Document A201-1997.

7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

8.1 The Cost of the Work shall not include:

8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Subparagraphs 7.2.2 and 7.2.3 or as may be provided in Article 14.

8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

8.1.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 7.5.2.

8.1.6 Except as provided in Subparagraph 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

8.1.7 Any cost not specifically and expressly described in Article 7.

8.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

9.2 Amounts that accrue to the Owner in accordance with the provisions of Paragraph 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

10.2 If a specific bidder among those whose bids are delivered by the Contractor to the Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

12.1 PROGRESS PAYMENTS

12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

12.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment to the Contractor not later than the last working day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) calendar days after the Architect receives the Application for Payment.

12.1.4 With each Application for Payment, the Contractor shall submit the previous months cost report along with copies of the major Subcontractor Payment Applications for the current month, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of

the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Subparagraph 7.3.8 of AIA Document A201-1997;

.2 add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; subject to Paragraph 7.4.1;

.3 add the Contractor's Fee, Reduce such sum by an amount, the retainage, equal to the sum of (i) the retainage provided for in Paragraph 12.1.8, plus (ii) ten percent (10%) of the Contractor's Fee. The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work

in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 subtract the aggregate of previous payments made by the Owner;

.5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and

.6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201-1997.

12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than ten percent (10%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors. Payment in full may be made to those Subcontractors whose work is satisfactorily completed and accepted by the Owner and the Contractor prior to Substantial Completion.

12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

12.2 FINAL PAYMENT

12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 12.2.2 of AIA Document A201-1997 and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Architect.

12.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Subparagraph 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of the AIA Document A201-1997. The time periods stated in this Subparagraph 12.2.3 supersede those stated in Subparagraph 9.4.1 of the AIA Document A201-1997.

12.2.4 If the Owner's accounts report the Cost of the Work as substantiated by the Contractor's final accounting to be less that claimed by the Contractor, the Contractor shall be entitled to demand, in writing to Owner, that the Cost of the Work be determined by a third party or other dispute resolution mechanism. Such demand for determination by a third party or other dispute resolution mechanism shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment; failure to demand such determination by a third party or other dispute resolution mechanism within this 30 day period shall result in the amount reported by the Owner's accounts becoming binding on the Contractor. If the Contractor makes such demand but the Owner and the Contractor do not agree upon the third party or the other dispute resolution mechanism within 60 days after the demand, the Contractor shall be entitled to commence an action in the state court where the Project is situated to determine the Cost of Work. No such action, or any other action by Contractor against Owner, shall be commenced more that one year after the date of the Architect's final Certificate for Payment.

12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in

savings as provided in Paragraph 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 TERMINATION OR SUSPENSION

13.1 The Contract may be terminated by the Contractor, or by the Owner for convenience, as provided in Article 14 of AIA Document A201-1997. However, the amount to be paid to the Contractor under Subparagraph 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Paragraph 13.2 below.

13.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997. The amount, if any, to be paid to the Contractor under Subparagraph 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

13.2.1 Take the Cost of the Work incurred by the Contractor to the date of termination,

13.2.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

13.2.3 Subtract the aggregate of previous payments made by the Owner.

13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Subparagraph 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

13.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Subparagraphs 5.1.2 and Paragraph 6.4 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

14.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(INSERT RATE OF INTEREST AGREED UPON, IF ANY.)

(USURY LAWS AND REQUIREMENTS UNDER THE FEDERAL TRUTH IN LENDING ACT, SIMILAR STATE AND LOCAL CONSUMER CREDIT LAWS AND OTHER REGULATIONS AT THE OWNER'S AND CONTRACTOR'S PRINCIPAL PLACES OF BUSINESS, THE LOCATION OF THE PROJECT AND ELSEWHERE MAY AFFECT THE VALIDITY OF THIS PROVISION. LEGAL ADVICE SHOULD BE OBTAINED WITH RESPECT TO DELETIONS OR MODIFICATIONS, AND ALSO REGARDING REQUIREMENTS SUCH AS WRITTEN DISCLOSURES OR WAIVERS.)

14.3 The Owner's representative is:

(NAME, ADDRESS AND OTHER INFORMATION.)
Ken Schultz
BSL, Inc.
711 Casino Magic Drive
Bay St. Louis, MS 39520

14.4 The Contractor's representative is:

(NAME, ADDRESS AND OTHER INFORMATION.)
Jim Hardin or Judson McLeod
Roy Anderson Corp
P.O. Box 2

Gulfport, MS 39502

14.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

14.6 Other provisions:

14.6.1 M/E/P Work. Owner shall have design responsibility except for that part of the work constituting mechanical, plumbing, fire protection, and electrical work (the "M/E/P" Work"), including the design portion thereof. Contractor shall not have any liability to Owner for the design portion of the M/E/P Work which Contractor subcontracts out, except to extent that Contractor may actually recover on such subcontractor's errors and omissions insurance policy.

14.6.2 Shared Savings. For effective management, the Owner shall pay to the Contractor a Bonus/Shared Savings upon project completion. The Bonus/Shared Savings shall not exceed 1.5% of the Cost of the Work (not to exceed the Guaranteed Maximum Price)and shall not exceed the amount of any savings. The "Bonus/Shared Savings" shall be based on the following components and criteria:

A. Bonuses paid as part of Contractors regular compensation practices and policies for onsite personnel to include Project Management and Superintendents. The positions qualifying for bonuses are as identified in Exhibit "E" "Contractors Supervisory Personnel". Each bonus pursuant to this clause A shall be subject to Owner's written approval on an individual by individual basis. The aggregate portion of the bonus pursuant to this clause A shall not exceed .30% of the Cost of the Work.

B. Eighty (80%) of all savings achieved as a result of the Contractor's Controlled Insurance Program ("CCIP"). The portion of the bonus pursuant to this clause B shall not exceed .25% of the Cost of the Work. Savings achieved shall be the excess of (i) line item insurance amounts in subcontractor's bids plus Contractor's insurance cost for Self Performed Work over (ii) the cost of the CCIP.

C. Seventy (70%) of all labor, material and equipment savings on all of Contractors Self Performed Work, exclusive of General Conditions, shall inure to the benefit of the Contractor. The portion of the "Savings" attributable to this clause C shall not exceed .45% of the Cost of the Work. Savings achieved shall be the excess of (i) the original schedule of value amount for Self Performed Work over (ii) the Cost of the Work for the Self Performed Work only.

D. A Discretionary Bonus to be paid by the Owner to the Contractor based on the Owner's assessment of the Contractor's performance relative to schedule/timeliness of the completion, overall construction quality and effective utilization of the construction budget and Project Contingency to obtain maximum benefit for the Owner. The portion of the bonus pursuant to this clause D shall not exceed .45% of the Cost of the Work.

14.6.3 Notice. All notices required by or relating to this Agreement shall be in writing and shall be personally delivered or sent by United States registered or certified mail, return receipt requested, or by commercial overnight mail delivery service which obtains signed evidence of delivery, postage prepaid to the other party at its address above set forth, or at such other address as such other party shall designate by notice, and shall be effective when delivered to such address. Notices to Owner and to Contractor shall be addressed to the representatives at the addresses set forth in Paragraphs 14.3 and 14.4.

14.6.4 Time of the Essence. Wherever this Agreement provides for a date, day or period of time on or prior to which action or events are to occur or not occur, time shall be of the essence.

14.6.5 Protection of Ongoing Operations. The area in which the Work is to be performed (the "Project Site") is one in which the public will be invited, and in which Owner will operate its business. During the Work, the public

will have access to and over portions of the Project Site, and owner will continue to operate its business. Contractor shall implement safety and security precautions necessary and appropriate both when the Work is being performed, in light of the presence of the public and Owner's employees and facilities in such areas, and at night and on weekends when no Work is being performed. Contractor shall protect all such facilities, stored materials, Contractors equipment, and completed Work from damage during the course of the Work in a manner designed to minimize interference with the construction of improvements by occupants.

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997.

15.1.2 The General Conditions are the 1997 edition of the General

Conditions of the Contract for Construction, AIA Document A201-1997., as amended by the parties, and attached hereto as Exhibit "F".

15.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

Document	Title	Pages

15.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 15.1.3, and are as follows:

(EITHER LIST THE SPECIFICATIONS HERE OR REFER TO AN EXHIBIT ATTACHED TO THIS AGREEMENT.)

Section	Title	Pages

See Exhibit "A"

15.1.5 The Drawings are as follows, and are dated unless a different date is shown below:

(EITHER LIST THE DRAWINGS HERE OR REFER TO AN EXHIBIT ATTACHED TO THIS AGREEMENT.)

Number	Title	Date

See Exhibit "A"

15.1.6 The Addenda, if any, are as follows:

Number	Date	Pages

None.

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:

(LIST HERE ANY ADDITIONAL DOCUMENTS, SUCH AS A LIST OF ALTERNATES THAT ARE INTENDED TO FORM PART OF THE CONTRACT DOCUMENTS. AIA DOCUMENT A201-1997 PROVIDES THAT BIDDING REQUIREMENTS SUCH AS ADVERTISEMENT OR INVITATION TO BID, INSTRUCTIONS TO BIDDERS, SAMPLE FORMS AND THE CONTRACTOR'S BID ARE NOT PART OF THE CONTRACT DOCUMENTS UNLESS ENUMERATED IN THIS AGREEMENT. THEY SHOULD BE LISTED HERE ONLY IF INTENDED TO BE PART OF THE CONTRACT DOCUMENTS.)

Exhibit "A" - Drawings and Specifications.
Exhibit "B" - Contractor's Scope Summary, GMP Estimate with Allowances, and Schedule dated 00/00/00.
Exhibit "C" - Owner Purchase Program.
Exhibit "D" - Contractors Self Perform Work

Exhibit "E" - Contractors Supervisory Personnel
Exhibit "F" - General Conditions
Exhibit "G" - Renovation Scope
Exhibit "H" - Amendment No. 1

ARTICLE 16 INSURANCE AND BONDS

(LIST REQUIRED LIMITS OF LIABILITY FOR INSURANCE AND BONDS. AIA DOCUMENT A201-1997 GIVES OTHER SPECIFIC REQUIREMENTS FOR INSURANCE AND BONDS.)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

- ----------	----------
OWNER (SIGNATURE)	CONTRACTOR (SIGNATURE)
- ----------	----------
(PRINTED NAME AND TITLE)	(PRINTED NAME AND TITLE)

EXHIBIT "A"

DRAWINGS AND SPECIFICATIONS

EXHIBIT "B"

CONTRACTOR'S SCOPE SUMMARY, GMP ESTIMATE WITH ALLOWANCES, AND SCHEDULE DATED _____, 2000

EXHIBIT "D"

SELF PERFORMED WORK

To be established with execution of Amendment No. 1.

EXHIBIT "E"

SUPERVISORY PERSONNEL

EXHIBIT "F"

GENERAL CONDITIONS

EXHIBIT "G"
RENOVATIONS SCOPE

1.0 PROJECT DESCRIPTION
The Project consists of nine (9) separate interior renovation projects located throughout the existing Casino Magic facility in Bay St. Louis, Mississippi. These nine (9) separate renovation projects are as follows:

1.1 BUFFET REMODEL - FG # 100093
The project consists of a themed interior remodel of public spaces and remodel of the kitchen for the existing buffet. The theme will be that of a Louisiana Market Place Buffet. The work includes a new cooking line, adjustments to existing partition locations, new seating layout, new floor, wall and ceiling finishes.

1.2 BANDSTAND REMODEL - FG # 100096
The project consists of replacing the existing curtains surrounding the stage with permanent partitions.

1.3 BANDSTAND BAR REMODEL - FG # 100112
The project consists of a cosmetic facelift to the existing bar area finishes.

1.4 BARGE BAR REMODEL - FG # 100113
The project consists of a cosmetic facelift to the existing bar area finishes. There are no changes to the bar configuration or equipment.

1.5 BARGE CASINO COLUMN AND WALL TREATMENTS -- FG # 100114
The project consists of column and wall treatments within the existing casino area of the Barge. The existing flooring and ceiling materials are to remain as is.

1.6 HOTEL LOBBY REMODEL - FG # 100115
The project consists of a cosmetic facelift of the existing Hotel lobby area finishes. The existing lobby furniture is to remain as is.

1.7 GANGWAY CURTAIN TREATMENT - FG # 100116
The project consists of replacing the existing curtains on each end of the gangway with new curtain treatment.

1.8 BARGE ELEVATOR RELOCATION - FG # 100117
The project consists of the Barge elevator being relocated by others.

1.9 SNACK BAR RENOVATION - FG # 100118
The existing snack bar approximately (1,267 square feet) is to be converted into a gourmet coffee/pastry bar (similar to a Starbucks).

EXHIBIT "H"
AMENDMENT NO. 1 TO AGREEMENT
BETWEEN OWNER AND CONTRACTOR

Pursuant to Paragraph 5.2 of the Agreement, dated _____, 2000 between _____ (Owner) and _____ (Contractor), for _____ (the Project), the Owner and Contractor establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below.

ARTICLE 1
GUARANTEED MAXIMUM PRICE

The Contractor's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Article 6 and the Contractor's Fee as defined in Article 5, is _____ Dollars ($).

This price is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits A through F, as follows:

EXHIBIT A -- Drawings, Specifications, addenda and General, Supplementary and other Conditions of the Contract on which the Guaranteed Maximum Price is based,
pages __ through __, dated _____.

EXHIBIT B -- Allowance items,
pages _ through __, dated _____.

EXHIBIT C -- Assumptions and clarifications made in preparing the Guaranteed Maximum Price,
pages __ through __, dated _____.

EXHIBIT D -- Completion schedule,
pages __ through __, dated _____.

EXHIBIT E - Alternate prices,
pages __ through __, dated _____.

EXHIBIT F -- Unit prices,
pages __ through __, dated _____.

ARTICLE II
CONTRACT TIME

The date of Substantial Completion established by this Amendment is:_____.

OWNER: BSL, INC.	CONTRACTOR:
By:	By:
---	---
	Roy Anderson, III -- President & CEO
Date: _____, 2000	Date: _____, 2000

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

AIA DOCUMENT A201 - 1997
1997 EDITION - ELECTRONIC FORMAT

TABLE OF ARTICLES

INDEX

ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if

required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

Insert A: 1.2.4. The Contract documents apply to contractor and each Subcontractor.

1.3 CAPITALIZATION
1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

1.4 INTERPRETATION
1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.5 EXECUTION OF CONTRACT DOCUMENTS
1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE
1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights. This Paragraph 1.6.1 shall not limit the Owner's rights to use the

Drawings, Specifications, and other documents, which right is separately determined between Owner and Architect.

ARTICLE 2 OWNER

2.1 GENERAL

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Subparagraph 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work after such request by Contractor.

2.2.2 Except for permits and fees, including those required under Subparagraph 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 72 hour period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such 72 hour period without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

3.1 GENERAL

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

Insert B: 3.1.4 Observation or work by Architect or by employees of Owner or of Architect shall not be interpreted as relieving contractor from its responsibility for coordination of all work, its superintendence of the Work, and its scheduling and direction of the Work.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require.

3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect and Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect and Owner.

3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect and Owner.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of

the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse after substantial completion, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded. Certificate of inspection, and Use and Occupancy permits or licenses shall be delivered to the Owner upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment and delivery are included within the Contract Sum and Guaranteed Maximum Price.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.1 and (2) changes in Contractor's costs under Clause 3.8.2.2.

3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

Insert C: 3.9.2 The list of all supervisory personnel, including the Project Manager and Superintendent, that the Contractor intends to use on the Project and a chain-of-command organizational chart is attached as Exhibit "E." The Contractor shall not engage supervisory personnel or utilize an organization and chain-of-command other that as set forth in Exhibit "E" and shall not change such personnel or form of organization without the written approval of the Owner.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during

construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field

construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a

properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Subparagraph 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

Insert D: 3.13.2 The Contractor shall assure free, convenient, unencumbered and direct access to properties neighboring the Project site for the Owners of such properties and their respective tenants, agents, invitees and guests.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. The Contractor

shall maintain streets and sidewalks around the Project site in a clean condition. The Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas, and shall estabilsh a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK
3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.17 ROYALTIES, PATENTS AND COPYRIGHTS
3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.18 INDEMNIFICATION
3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Paragraph 11.3, the Contractor shall

indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT
4.1 ARCHITECT
4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

4.1.2 Duties and responsibilities of the Architect as set forth in the Contract Documents shall not be restricted or modified, and limitations of authority of the Architect as set forth in the Contract Documents shall not be extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect whose status under the Contract Documents shall be that of the former Architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT
4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Paragraph 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to

become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1.

4.2.3 The Architect will not be responsible to the Contractor for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible to the Contractor for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Owner and Contractor shall communicate directly with each other regarding administration of the Contract documents and shall endeavor to advise Architect of the resolution of all material issues regarding the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written

request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.3 CLAIMS AND DISPUTES

4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Subparagraph 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4.

4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6.

4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

4.3.7 Claims for Additional Time

4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

4.3.10 [Intentionally Omitted].

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 [Intentionally Omitted].

4.4.2 [Intentionally Omitted].

4.4.3 [Intentionally Omitted].

4.4.4 [Intentionally Omitted].

4.4.5 [Intentionally Omitted].

4.4.6 [Intentionally Omitted].

4.4.7 [Intentionally Omitted].

4.4.8 [Intentionally Omitted].

4.5 MEDIATION

4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5 shall, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

4.5.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

4.6 ARBITRATION

4.6.1 Upon the agreement of Owner and Contractor any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 4.5.

4.6.2 Upon the agreement of Owner and Contractor, Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

4.6.3 A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.4.6 and 4.6.1 as applicable, and in other

cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

4.6.4 [Intentionally Omitted]

4.6.5 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

4.6.6 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitute.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the

Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed

Sub-subcontractors.

Insert E: 5.3.2 Notwithstanding any provision of Subparagraph 5.3.1, any part of the Work performed for the Contractor by Subcontractor or its Sub-subcontractor shall be pursuant to a written subcontract between the Contractor and such Subcontractor. Each such subcontract shall, where the context so requires, contain provisions that:

Insert F: 5.3.2.1 require that such Work be performed in accordance with the requirements of the Contract Documents.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 or for convenience pursuant to Paragraph 14.4 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Paragraph 4.3.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Other until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Subparagraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

7.1 GENERAL

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

.1 change in the Work;

.2 the amount of the adjustment, if any, in the Contract Sum; and

.3 the extent of the adjustment, if any, in the Contract Time.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The

Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 unit prices stated in the Contract Documents or subsequently agreed upon;

.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment

shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs.

7.3.9 When the Owner and Contractor agree concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement.

8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the commencement or

progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3. A copy of any claim for extension shall be delivered to the Owner, and the Contractor shall immediately take all steps reasonably possible to lessen the adverse impact of such delay on Owner.

8.3.3 This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect and Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect and Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

9.3.1.1 As provided in Subparagraph 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the

Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the

amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2, because of:

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or another contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 persistent failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to

that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

Insert G: Contractor shall deliver to Owner a partial release on a form acceptable to the Owner upon submission of each Certificate for Payment.

9.7 FAILURE OF PAYMENT
9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. The Contractor shall not stop the Work during the pendency of a bona fide dispute not involving Contractor payment between the Owner and the Contractor.

9.8 SUBSTANTIAL COMPLETION
9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and when all required occupancy permits within the Contract of the Contractor, if any, have been issued so that the Owner can occupy or utilize the Work for its intended use.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. After substantial completion, the Contractor shall secure and deliver to the Owner written warranties and guarantees from its Subcontractors, Sub-subcontractors and suppliers bearing the date of Substantial Completion or some other date as may be agreed to by the contract documents. The Contractor is responsible for the warranty of all Work, whether performed by it or by its subcontractors at any time. The Contractor shall assemble for the Architect's approval three

complete copies in looseleaf binders of all operating and maintenance data from all manufacturers whose equipment or material is or will be installed in the work, including names, addresses, and telephone numbers of subcontractors, service organizations, manufacturers, and sourcs for supply of parts. The Contractor shall also prepare a checklist or schedule showing the type of lubricant to be used at each point of application, and the intervals between lubrication for each item or equipment.

9.8.5 The Certificate of Substantial Completion shall be submitted to the

Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Clause 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or or will be paid as follows: (i) with respect to previous Applications for Payment for which the Contractor has been paid in full, such indebtedness has been paid or otherwise satisfied and (ii) with respect to the Application for Final Payment or other Applications for Payment for which the Contractor has not received full payment, such indebtedness will be paid only, as a condition precedent, promptly after the Contractor's actual receipt of full payment from the Owner, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the

Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and

certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents; or

.3 terms of special warranties required by the Contract Documents.

9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for payment. Contractor shall deliver to Owner a final release on a form acceptable to the Owner upon receipt of final payment.

Insert H: 9.11 CONDITIONED PAYMENTS
Insert I:
Insert J: 9.11.1 Nothing in the Agreement or other Contract Documents is intended not may be construed to waive, abridge, or adversely affect the Contractor's right to make the Contractor's actual receipt of payment from the Owner a condition precedent to the Contractor's payment (whether progress, final, or any other payment) to Subcontractors, suppliers, or other contractees. If the Contractor or its contractees are required to submit affidavits of Payment, waivers of rights, releases of claims, or the like, such requirements will not be deemed effective as to unpaid contract balances and retainage until same are actually received by the Contractor from the Owner.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of and shall provide reasonable protection to prevent damage, injury or loss to:

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except

damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.3 HAZARDOUS MATERIALS

10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Subparagraph 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

10.4 The Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

10.6 EMERGENCIES

10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located and acceptable to Owner such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 claims for damages insured by usual personal injury liability coverage;

.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 claims for bodily injury or property damage arising out of completed operations; and

.8 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage on account of revised limits or

claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.2 OWNER'S LIABILITY INSURANCE
11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE
11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Clauses 11.1.1.2 through 11.1.1.5.

11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liability Insurance coverage under Paragraph 11.1.

11.4 PROPERTY INSURANCE
11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without

optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by Owner and Contractor, until final payment has been made as provided in Paragraph 9.10 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs in excess of $1,000.00 not covered because of such deductibles and Contractor shall be responsible for the first $1,000.00 of the deductible for a claim of property damage under the Builder's Risk or equivalent policy.

11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

11.4.1.5 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The

Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.4.2 BOILER AND MACHINERY INSURANCE. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.4.3 LOSS OF USE INSURANCE. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

11.4.7 WAIVERS OF SUBROGATION. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly and whether or nor the person or entity had an insurable interest in the property damaged.

11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such

agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Paragraphs 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

11.5 PERFORMANCE BOND AND PAYMENT BOND

11.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to its being covered, the Architect, with Owner's approval, may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition to the Contractor's obligations under Paragraph 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Paragraph 2.4.

12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Paragraph 12.2.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.5 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Subparagraph 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

13.3 WRITTEN NOTICE
13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

13.4 RIGHTS AND REMEDIES
13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.5 TESTS AND INSPECTIONS
13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Owner shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Subparagraph 13.5.3, shall be at the Owner's expense.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 INTEREST
13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD
13.7.1 As between the Owner and Contractor:

.1 BEFORE SUBSTANTIAL COMPLETION. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

.2 BETWEEN SUBSTANTIAL COMPLETION AND FINAL CERTIFICATE FOR PAYMENT. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment;

and

.3 AFTER FINAL CERTIFICATE FOR PAYMENT. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Paragraph 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

.3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 [Intentionally Omitted].

14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

14.1.3 If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to

the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

Insert K: .5 notwithstanding anything to the contrary herein the Owner shall give the Contractor written notice of groungs for termination for cause and afford the Contractor reasonable opportunity to cure before exercising any rights or remedies under Paragraph 14.2.

14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after

giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 accept assignment of subcontracts pursuant to Paragraph 5.4; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds cost of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE
14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Subparagraph 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE
14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work done by Contractor to the date of termination not previously paid for, less sums already received by Contractor on account of the portion of the Work performed. If at the date of such termination, Contractor has properly prepared or fabricated off the Project site any goods for subsequent incorporation in the Work, and if Contractor delivers such good to the Project site or to such other place as the Owner shall reasonably direct, the Contractor shall be paid for such goods or materials.

EXHIBIT "H"
AMENDMENT NO. 1 TO AGREEMENT
BETWEEN OWNER AND CONTRACTOR
APRIL 4, 2001

Pursuant to Paragraph 5.2 of the Agreement, dated January 3, 2000 between BSL, Inc. (Owner) and Roy Anderson Corp (Contractor), for Casino Magic Hotel, Phase I (the Project). The Owner and Contractor establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below.

ARTICLE 1
GUARANTEED MAXIMUM PRICE

The Contractor's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Article 7 and the Contractor's Fee as defined in Article 5 is Twenty Three Million Two Hundred Thirty Five Thousand Eight Hundred Three Dollars ($23,235,803.00), subject to additions and deductions by Change Order as provided in the Contract Documents. The Guaranteed Maximum Price does not include Add Alternate No. 1: Ballroom, Prefuction, & Ancillary Areas Build-out.

This price is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits A, B, C, D, and E as follows:

EXHIBIT A - Drawings and Specifications on which the Guaranteed Maximum Price is based.

Pages 1 through 10 dated 3/19/01

EXHIBIT B - Contractor's Scope Summary (B-1), GMP Estimate with Allowances (B-2), and Schedule (B-3).

Pages 1 through 7 dated 4/4/01.

EXHIBIT C - Add Alternate No. 1: Ballroom, Prefunction, & Ancillary Areas Build-out (Not included in Guaranteed Maximum Price)

Pages 1 through 1 dated 4/4/01.

EXHIBIT D - Contractor's Self-Perform Work.

Pages 1 through 1 dated 3/19/01.

EXHIBIT E - Contractor's Supervisory Personnel.

Pages 1 through 1 dated 3/19/01.

ARTICLE II
CONTRACT TIME

The date of Substantial Completion established by this Amendment is: 5/09/02.

OWNER: BSL, INC.	CONTRACTOR:
By: ----------	By: ---------- Jim Hardin, Jr. - V.P. of Construction
Date: ----------	Date: April 4, 2001 ----------

EXHIBIT "A"
MARCH 19, 2001

DRAWINGS:

DRWG #	DESCRIPTION	DATE ISSUED	DATEREV	REV
A000	Cover Sheet/Index of Drawings	8/25/00	9/25/00	2
A001	Abbrev., Symbols, Gen Notes, Code Summary	8/25/00	9/25/00	2
A002	Abbrev., Symbols, Gen Notes, Code Summary	8/25/00	9/25/00	2
A003	Existing Site Plan	8/25/00	9/25/00	2
A004	Overall Site Plan	8/25/00	9/25/00	2
A005	Existing/Demolition First Floor Plan	8/25/00	9/25/00	2
A006	Existing/Demolition Second Floor Plan	8/25/00	9/25/00	2
	FIRE RATED PARTITION PLANS			
A020	Hotel Fire Rated Partition Plans	8/25/00	9/25/00	2
A021	Hotel Fire Rated Partition Plans	8/25/00	9/25/00	2
	FLOOR AND ROOF PLANS			
A100	First Floor Plan - Part A	8/25/00	9/25/00	2
A101	First Floor Plan - Part B	8/25/00	9/25/00	2
A102	Second Floor Plan - Part A	8/25/00	9/25/00	2
A103	Roof Plan	8/25/00	9/25/00	2
A104	Enlarged Hotel Entry Plan	9/25/00		1
A105	Enlarged Restaurant/Kitchen Plan	9/25/00		1
A106	Enlarged Spa Plan	9/25/00		1
A107	Enlarged Plans - Service Area	9/25/00		1
A110	Hotel First and Mezzanine Floor Plans	8/25/00	9/25/00	2
A111	Hotel Typical (02-120 and VIP (13th) Floor Plans	8/25/00	9/25/00	2
A112	Hotel Roof Plan	8/25/00	9/25/00	2
A120	Enlarged Renovation First Floor Plan	9/25/00		1
A121	Enlarged Renovation Second Floor Plan	9/25/00		1
	ELEVATIONS			
A200	Casino South Elevations	8/25/00	9/25/00	2
A201	Casino North Elevations	8/25/00	9/25/00	2
A210	Hotel South Elevation	8/25/00	9/25/00	2
A211	Hotel West & East Elevation	8/25/00	9/25/00	2
A212	Hotel North Elevation	8/25/00	9/25/00	2

DRWG #	DESCRIPTION	DATE ISSUED	DATEREV	REV
A220	Enlarged Elevations	8/25/00	9/25/00	2
A230	Service/Ballroom Elevations	8/25/00	9/25/00	2
A240	Function Interior Elevations	8/25/00	9/25/00	2
BUILDING SECTIONS				
A300	Function Building Sections	8/25/00	9/25/00	2
A310	Hotel Building Sections	8/25/00	9/25/00	2
ENLARGED PLANS, ELEVATIONS & SECTIONS (1/4" = 1'-0")				
A410	Hotel Enlarged Room Plans	8/25/00	9/25/00	2
A411	Hotel Enlarged Room Elevations	8/25/00	9/25/00	2
A412	Hotel Enlarged Toilet Plans and Elevations	8/25/00	9/25/00	2
A413	Hotel Enlarged Core Plans	8/25/00	9/25/00	2
A420	Hotel Enlarged Wall Sections	8/25/00	9/25/00	2
A450	Hotel Enlarged Elevations	8/25/00	9/25/00	2
EXTERIOR DETAILS (1 1/2" = 1'-0")				
A510	Function Wall Sections	8/25/00	9/25/00	2
A512	Function Wall Sections	8/25/00	9/25/00	2
A515	Function Sections Details	8/25/00	9/25/00	2
A520	Hotel Plan Details	8/25/00	9/25/00	2
A521	Hotel Plan Details	8/25/00	9/25/00	2
A530	Hotel Wall Section Details	8/25/00	9/25/00	2
A531	Hotel Wall Section Details	8/25/00	9/25/00	2
SCHEDULES				
A600	Partition Schedule	8/25/00	9/25/00	2
A601	Partition Schedule	8/25/00	9/25/00	2
A602	Window Elevations & Glazing Types	8/25/00	9/25/00	2
A603	Door Elevations & Details	8/25/00	9/25/00	2
STAIRS				
A700	Function Stair Plans & Sections	8/25/00	9/25/00	2
A710	Hotel Stair Plans, Sections & Details	8/25/00	9/25/00	2
A711	Hotel Stair Plans, Sections & Details	8/25/00	9/25/00	2
ELEVATORS AND ESCALATORS				
A810	Hotel Elevator Plans, Sections & Details	8/25/00	9/25/00	2

DRWG #	DESCRIPTION	DATE ISSUED	DATEREV	REV
REFLECTED CEILING PLANS				
A900	Function First Floor RCP - Part A	8/25/00	9/25/00	2
A901	Function First Floor RCP - Part B	8/25/00	9/25/00	2
A902	Function Second Floor Plan - Part A	8/25/00	9/25/00	2
A903	Function Enlarged Hotel Entry RCP	9/25/00		1
A904	Function Enlarged Elevator & Corridor RCP	9/25/00		1
A905	Function Enlarged Spa RCP	9/25/00		1
A906	Function Enlarged Ballroom RCP	9/25/00		1
A910	Hotel 1st and Mezzanine Floor RCP	8/25/00	9/25/00	2
A911	Hotel Typ. (02-12) and VIP (13th) Floor RCP	8/25/00	9/25/00	2
STRUCTURAL				
S000	General Notes	8/25/00		1
S010	Load Key Sheet	8/25/00		1
S011	Load Key Sheet	8/25/00		1
S012	Load Key Sheet	8/25/00		1
S040	Typical Concrete Details	8/25/00		1
S050	Typical Steel Details	8/25/00		1
S100	Hotel Foundation Plan	8/25/00		1
S101	Lowrise Foundations Framing Plan	8/25/00		1
S102	Central Plant Foundation Plan	8/25/00		1
S110	Hotel Mezzanine Plan	8/25/00		1
S111	Lowrise Roof Framing Plan	8/25/00		1
S112	Central Plant Framing Plan	8/25/00		1
S120	Hotel Second Framing Plan	8/25/00		1
S130	Hotel Typical Framing Plan	8/25/00		1
S140	Hotel Roof Plan	8/25/00		1
S150	Hotel Mansard and Penthouse Plan	8/25/00		1
S200	Hotel Wall Elevations	8/25/00		1
S201	Hotel Wall Elevations	8/25/00		1
S202	Hotel Wall Elevations	8/25/00		1
S203	Hotel Wall Elevations	8/25/00		1
S204	Hotel Wall Elevations	8/25/00		1
S205	Hotel Wall Elevations	8/25/00		1
S206	Hotel Section Thru Penthouse	8/25/00		1
S210	Central Plant Elevations	8/25/00		1
S500	Foundation Details	8/25/00		1
S520	Hotel Post Tensioning Plans	8/25/00		1

DRWG #	DESCRIPTION	DATE ISSUED	DATEREV	REV
S521	Hotel Post Tensioning Plans	8/25/00		1
S522	Hotel Post Tensioning Plans	8/25/00		1
S523	Hotel Post Tensioning Plans	8/25/00		1
S551	Low Rise Steel Details	8/25/00		1
S570	Hotel Light Gauge Details	8/25/00		1
S580	Hotel Column Schedule & Detail	8/25/00		1
S590	Hotel Beam Schedule & Details	8/25/00		1
MECHANICAL				
M100	First Floor HVAC & Piping Plan - Part A	8/25/00		1
M111	First Floor HVAC & Piping & Schematics	8/25/00		1
M112	Mezzanine Piping & Schematic Plans	8/25/00		1
M113	Mezzanine HVAC Plan	8/25/00		1
M114	2nd - 12th Floor HVAC/Piping & Schemtaic Plan	8/25/00		1
M115	HVAC Roof Plan	8/25/00		1
M200	Chilled Water Supply & Return	8/25/00		1
M201	Chilled Water Supply & Return	8/25/00		1
M300	Chilled Water Supply & Return	8/25/00		1
M301	Chilled Water Supply & Return	8/25/00		1
M400	Equipment Schedules	8/25/00		1
PLUMBING				
P102	Mezzanine Ceiling	8/25/00		1
P103	Plumbing Hotel 02 - 12th Floors	8/25/00		1
P104	Plumbing Hotel 13th Floor	8/25/00		1
P301	Waste Riser Diagrams	8/25/00		1
P302	Domestic Water Riser Diagrams	8/25/00		1
ELECTRICAL				
E201	Typical 02-12 Level Corridor Plan	8/25/00		1
E202	Typical VIP Level Corridor Plan	8/25/00		1
E401	Hotel Plan - First Floor	8/25/00		1
E402	Hotel Mezzanine Plan	8/25/00		1
E403	Typical 02-12 Level Room Plans	8/25/00		1
E404	Typical VIP Level Room Plans	8/25/00		1
E405	Central Plant Plan	8/25/00		1

DRWG #	DESCRIPTION	DATE ISSUED	DATEREV	REV
E501	Electrical One Line Diagram	8/25/00		1
DRAWING UPDATES AND SKETCHES				
A100a	First Floor Plan - Part A Renovations	9/25/00	10/4/00	2
A102a	Second Floor Plan - Part A Renovations	9/25/00	10/4/00	2
ASK-001	Overall Structural Grid	9/26/00		1
ASK-002	South Ballroom Structure	9/26/00		1
ASK-003	North Ballroom Structure	9/26/00		1
ASK-004	Ballroom Truss	9/26/00		1
ASK-005	Truss Details	9/26/00		1

SPECIFICATIONS
SECTION 00005
TABLE OF CONTENTS

VOLUME I

VOLUME I

VOLUME I

		DATE	ISSUE
DIVISION 6 - WOOD & PLASTICS			
06100	Rough Carpentry	3/16/01	#3
06114	Wood Blocking and Curbing	3/16/01	#3
06200	Finish Carpentry	3/16/01	#3
06410	Custom Casework	3/16/01	#3
06620	Cast Plastic Fabrications	3/16/01	#3
DIVISION 7 - THERMAL & MOISTURE PROTECTION			
07110	Sheet membrane Waterproofing	3/16/01	#3
07140	Metallic Waterproofing	3/16/01	#3
07190	Vapor Barriers	3/16/01	#3
07212	Board Insulations	3/16/01	#3
07213	Batt and Blanket Insulation	3/16/01	#3
07218	Sprayed Insulation	3/16/01	#3
07241	Exterior Insulation and Finish System	3/16/01	#3
07255	Cementitious Fireproofing	3/16/01	#3
07270	Firestopping	3/16/01	#3
07468	Metal Siding	3/16/01	#3
07550	Modified Bituminous Membrane Roofing	3/16/01	#1
07610	Sheet Metal Roofing	3/16/01	#3
07612	Fabric Roofing	3/16/01	#3
07620	Sheet Metal Flashing and Trim	3/16/01	#3
07724	Roof Hatches	3/16/01	#3
07900	Joint Sealers	3/16/01	#3
DIVISION 8 - DOOR & WINDOWS			
08111	Standard Steel Doors	3/16/01	#3
08112	Standard Steel Frames	3/16/01	#3
08211	Flush Wood Doors	3/16/01	#3
08305	Access Doors	3/16/01	#3
08331	Overhead Coiling Doors	3/16/01	#3
08350	Mirrored Closet Doors	3/16/01	#3
08410	Aluminum Entrances and Storefronts	3/16/01	#3
08520	Aluminum	3/16/01	#3
08620	Skylights	3/16/01	#3
08710	Door Hardware	3/16/01	#3
08721	Automatic Door Equipment	3/16/01	#3
08800	Glazing	3/16/01	#3

VOLUME I

		DATE	ISSUE
DIVISION 9 - FINISHES			
09260	Gypsum Board Systems	3/16/01	#3
09300	Ceramic and Quarry Tile	3/16/01	#3
09511	Suspended Ceilings	3/16/01	#3
09650	Resilient Flooring	3/16/01	#3
09720	Vinyl Wall Covering	3/16/01	#3
09900	Painting	3/16/01	#3
09910	Textured Acrylic Coatings	3/16/01	#3
09911	Aggregated Decorative Spray Texture Finish	3/16/01	#3
09999	Schedules	3/16/01	#3

VOLUME II

DIVISION 10 - SPECIALTIES			
10165	Plastic Laminate Toilet Compartments	3/16/01	#3
10211	Fixed Metal Wall Louvers	3/16/01	#3
10260	Corner Guards	3/16/01	#3
10500	Metal Lockers	3/16/01	#3
10522	Fire Extinguishers, Cabinets and Accessories	3/16/01	#3
10536	Awnings	3/16/01	#3
10651	Operable Panel Partitions	3/16/01	#3
10800	Toilet and Bath Accessories	3/16/01	#3
10820	Shower Partitions and Doors	3/16/01	#3
10914	Coat Rack and Accessories	3/16/01	#3
DIVISION 11 - EQUIPMENT			
11160	Dock Equipment	3/16/01	#3
11165	Dock Bumpers	3/16/01	#3
11400	Food Facilities Equipment	3/16/01	#3
DIVISION 12 - FURNISHINGS			
12692	Floor mats	3/16/01	#3
DIVISION 13 - SPECIAL CONSTRUCTION			

Not Used

VOLUME II

EXHIBIT "B-1"

CASINO MAGIC HOTEL, PHASE I
BAY ST. LOUIS, MISSISSIPPI
CONTRACTOR'S SCOPE SUMMARY
April 4, 2001

We have based our estimate on the drawings and specifications shown in Exhibit "A". Following is a scope summary with attention brought to items that are assumptions used and/or subcontractor clarifications.

Basic Estimate Criteria:

- Sitework
- Hotel Building
- Low Rise Addition
- Central Plant
- Ballroom - Shell Building Only

- We have included the cost of providing general liability insurance for the project.

GENERAL REQUIREMENTS

- We have included temporary sanitary facilities, temporary lighting, temporary telephone, temporary heat, electrical distribution, drinking water, and temporary fire protection as required.
- We have assumed that all design documentation, as may be required for the successful prosecution of the work, will be provided by the architect (except for design-build elements as noted).
- The cost of all materials testing that may be required is not included in the estimate. We assume that these services will be contracted for directly by the Owner.
- The cost of initial professional engineering line and grade control is not included in the estimate. We assume that these services will be provided by the Owner's civil engineer.

DIVISION 2: SITEWORK

- We have included all sitework elements shown on the civil plans dated 2/2/01.
- We have not included irrigation and landscape.

DIVISION 3: CONCRETE

- We have included all concrete as shown on the structural plans dated 2/12/01.

DIVISION 4: MASONRY

- The only masonry work in the project is in a retaining wall and that is included in Division 2.

DIVISION 5: STEEL

- We have included all structural steel as shown on the structural plans dated 2/12/01.

DIVISION 6: CARPENTRY

- We have included all interior millwork items as shown on the drawings, or as outlined in allowances, in the hotel tower, low rise addition, and ballroom.

DIVISION 7: THERMAL & MOISTURE PROTECTION

- For the Exterior Insulated Finish System we have included:

    1. The use of Class PB 2" standard Exterior Insulated Finish System as manufactured by Parex or equivalent.
    2. Manufacturers standard medium sand or textured finish in no more than 3 integral colors.
    3. Heavy duty mesh at all high-traffic areas up to 8'0" above finish floor or grade.
    4. Manufacturers standard 5 year warranty.
    5. No reveals, EPS board thicker than 2" or Ameristone is included.

- We have included fireproofing of the structural steel as required by code.

- We have included Roofing Systems:

    1. Modified Bitumen Roof Systems with a roof insulation system consisting of one (1) layer of 2" polyisocyanurate and one layer of 3/4" perlite insulation for a combined R-value of 16.38, and a twelve (12) year no dollar limit roof warranty.
    2. All standing seam metal roofing and sheet metal flashing will be fabricated from 24 gauge galvanized metal with a Kynar 500 (20) year paint finish warranty.

DIVISION 8: DOORS, FRAMES, & GLAZING

- We have included public area and back of house doors based on the use of wood doors with a plastic laminate face installed in metal frames.

- We have included glass, glazing, storefront and entrances:

    1. Fixed opening above the 1st floor to be FG-123 aluminum frames.
    2. Storefront openings on the 1st floor to be 451 Tri-Fab Flush Glaze
    3. Door Stiles to be medium 350 with panic hardware.
    4. Glass to be 1" insulated tinted (green) over low "E" safety glass as required.
    5. Skylight (insulated tinted safety glass).

- We have included a guest entry Tesa card lock system with front desk station and portable programmer.

DIVISION 9: FINISHES

- We have included metal framing, drywall and ceilings per plans.

- We have included a flat acoustical ceiling in the ballroom with no furr downs.
- We have included tile, stone and VCT per plans.
- Carpet is owner furnished and owner installed.
- We have included painting.
- We have included installation of owner furnished vinyl wall covering.
- The second floor restaurant and kitchen is included as a shell only.

DIVISION 10: SPECIALTIES

- We have included entrance mats, a linen chute, toilet compartments, toilet accessories, louvers, wall and corner guards, flag poles, fire extinguishers with cabinets, and operable partitions.
- Exterior and interior signage is provided and installed by the owner.
- Closet and linen racks are provided and installed by the owner.

DIVISION 11: EQUIPMENT

- The cost of providing and installing the kitchen and food service equipment is not included in this estimate. We do include the cost associated with mechanical and electrical hook-up of this Owner furnished equipment.
- We have included a dock leveler and bumpers.

DIVISION 12: FURNISHINGS

- No work included in this section.

DIVISION 13: SPECIAL CONSTRUCTION

- We have included an allowance for all pools and pool related work.
- We have not included cost for the sauna package, steam room equipment, nor other spa equipment.

DIVISION 14: CONVEYING SYSTEMS
- ----------

o We have included Montgomery Kone elevators as follows:

1. Three (3) EcoSystem MR AC gearless traction passenger elevators with a capacity of 3,500 lbs., a speed of 400 fpm, Miprom Selective Collective Three Car Group Operation, and Kone's Series 220 design fixtures.

2. One (1) EcoSystem MR AC gearless traction service elevator with a capacity of 4,000 lbs., a speed of 400 fpm, Miprom Selective Collective Simplex Operation, and Kone's Series 220 design fixtures.

3. The highest stop for all elevators is the 14th floor. No elevator will go to the roof level.

DIVISION 15: MECHANICAL
- ----------

o PLUMBING AND HVAC

We have used MCC's design build estimate for the plumbing and HVAC system as shown on mechanical plans dated 2/9/01.

o FIRE PROTECTION

We have used Fire Protection System's design build estimate for the fire protection system. Fire Protection System's estimate includes Fire Protection for the hotel tower, central plant, a diesel fire pump, and underground piping.

DIVISION 16: ELECTRICAL
- ----------

We have used Haynes Electric's design build estimate for the electrical system as shown on electrical plans dated 2/9/01.

QUALIFICATIONS & EXCLUSIONS
- ----------

o Performance and material payment bonds are not included in our price.

o Any permits other than building permits are not included.

o Design fees are not included in our price (except as noted otherwise).

o We have made no allowance for unforeseen underground conditions or obstructions.

o We have not included any moneys for removal or replacement of contaminated soils.

o No power company fees or charges are included.

o Builder's risk insurance shall be provided by the owner.

o We have assumed that the owner will arrange for the installation of, and pay for all waste handling and food service equipment (including any coolers and freezers).

o All window coverings, furniture, artwork, sculpture, and rugs shall be the responsibility of the owner.

o Our estimate does not include any cost for Mississippi Power charges for bringing power to the site.

- This estimate does not include the cost of fees or charges by the Gas Company for bringing service to the site.

- Costs associated with build-out of the ballroom, prefunction, and ancillary areas are included in Add Alternate No. 1 and are not included in the Guaranteed Maximum Price.

EXHIBIT "B-2"
GMP ESTIMATE WITH ALLOWANCES
APRIL 4, 2001

SITEWORK, HOTEL TOWER, LOW ADDITION, CENTRAL PLANT & BALLROOM	$21,459,369
ALLOWANCE ITEMS	
3-Meal Restaurant Finish Out	400,000
Gas Service Line	5,000
Expansion Joint	5,500
Mock Up Room	30,000
Warehouse Mock Up	100,000
Tub Deck & Risers @ Resort and Jr. Rooms	27,734
Cabanna	24,200
Pool Deck	96,000
Swimming Pool (Surface Area)	137,500
Wading Pool (Surface Area)	13,500
Interior Finishes /Passenger Elevators	24,000
Whirlpool Tubs	60,000
Relocate Utilities	50,000
Pool Drainage & Outside Bars	10,000
Interior Light Fixture	200,000
Exterior Light Fixture	50,000
Parking Lot Lighting	28,000
Electrical @ Pool	15,000
TOTAL ALLOWANCES	$1,276,434
CONTINGENCY	500,000
GRAND TOTAL	$1,776,434
TOTAL CONTRACT SUM	$23,235,803

EXHIBIT "C"
ADD ALTERNATE NO. 1: BALLROOM, PREFUNCTION,
& ANCILLARY AREAS BUILD-OUT
APRIL 4, 2001

DESCRIPTION:

Add interior build-out including interior partitions, drywall, fiberglass reinforced panels, acoustical ceiling tile, flooring, drywall finish, paint, vinyl wall covering, operable partitions, plumbing, HVAC and electrical for the following areas: Ballroom B116, Function Area B110, Lobby B100, Board Room B101, Storage B102, Banquet Kitchen B103, Temp. Kitchen Storage B105, Future Service Lobby B106, Corridor B109, Part. Storage B112, Part. Storage B113, Part. Storage B114, Part. Storage B117, Part. Storage B119, Service Area B126, Banquet Service B127, Service Area B131, Service Corridor B133, Storage B134.

Doors and Finish Hardware	8,800
Drywall / FRP / Acoustical Ceiling	105,162
Flooring	20,677
Drywall Finish / Paint / Vinyl Wall Covering Installation	44,514
Operable Partitions	151,683
Plumbing and HVAC	232,000
Electrical	225,000
Electrical Dimming Allowance	15,000
Ballroom, Prefunction, and Public Space Interior Upgrade Allowance	150,000
Finish Carpentry Allowance @ Ballroom	9,500
Contingency	150,000
Fee	47,274
Gross Receipts Tax	40,586
Total Alternate No. 1 Amount	1,200,197

Amount assumes that work will be done concurrent with overall project schedule.

EXHIBIT "D"
MARCH 19, 2001
CONTRACTORS SELF PERFORM WORK
(Exclusive of General Conditions)

	LABOR	MATERIAL	EQUIPMENT
Building Demolition	$ 56,730		$ 3,440
Site Excavation and backfill	$ 101,122	$ 14,888	$ 52,238
Site Concrete	$ 16,227	$ 24,513	
Concrete (Includes items below) Foundation Work (excluding piling) Horizontal and Vertical Concrete Formwork Vertical Concrete Placement	$ 603,961	$1,326,133	$ 65,088
Hoisitng	$ 82,072	$ 74,674	$ 218,400
Masonry	$ 2,768	$ 6,580	$ 7,000
Metals	$ 7,679	$ 678,527	
Rough Carpentry	$ 76,658	$ 174,337	$ 3,477
Fireproof Sealants	$ 2,500		
Installation of doors and hardware	$ 137,770	$ 436,600	
Installation of Division 10 items	$ 32,243	$ 100,880	
	$1,119,730	$2,837,132	$ 349,643

EXHIBIT "E"

Contractors Supervisory Personnel

Project Manager - Judson McLeod
Assistant Project Manager - Steven Linton
Project Coordinator - Jerry Waugh
Superintendent - John Morgan
Assistant Superintendent - To be named
Concrete Superintendent - To be named
Finish Superintendent - To be named
Ballroom Superintendent - To be named

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR WHERE THE BASIS FOR PAYMENT IS THE COST OF THE WORK PLUS A FEE WITH A NEGOTIATED GUARANTEED MAXIMUM PRICE

AIA DOCUMENT A111 - 1997
1997 EDITION - ELECTRONIC FORMAT

- ---

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by The Associated General Contractors of America.

- ---

AGREEMENT made as of the day of October in the year Two Thousand One (In words, indicate day, month and year)

BETWEEN the Owner:
(Name, address and other information)
Penn National Gaming of West Virginia
Flowing Springs Road
Charles Town, WV 25414

and the Contractor:
(NAME, ADDRESS AND OTHER INFORMATION)
Howard Shockey & Sons, Inc.
P.O. Box 2530
Winchester, VA 22604-1730

The Project is:
(NAME AND LOCATION)
Charles Town Races Parking Garage and Entertainment Facility
Flowing Springs Road
Charles Town, WV 25414

The Architect is:
(NAME, ADDRESS AND OTHER INFORMATION)
Urban Design Group, Inc.
2410 Paces Ferry Road, Suite 270
Atlanta, GA 30339

The Owner and Contractor agree as follows.

ARTICLE 1 THE CONTRACT DOCUMENTS

3.1. The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

Insert A: 3.2 Contractor acknowledges that it has carefully examined the location, accessibility and general character of the site of the Work and all existing buildings on site. The Contractor shall exercise special care in executing subsurface work in the proximity of known subsurface utilities, improvements and easements. No oral agreement or conversation with any officer, agent or

employee of Owner either before or after the execution of the Agreement shall affect or modify any of the terms or obligations herein contained.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4.1 The date of commencement of the Work shall be the date of Owner execution of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(INSERT THE DATE OF COMMENCEMENT, IF IT DIFFERS FROM THE DATE OF THIS AGREEMENT OR, IF APPLICABLE, STATE THAT THE DATE WILL BE FIXED IN A NOTICE TO PROCEED.)

If, prior to commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

4.2 The Contract Time shall be measured from the date of commencement.

4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than _____ days from the date of commencement, or as follows:

(INSERT NUMBER OF CALENDAR DAYS. ALTERNATIVELY, A CALENDAR DATE MAY BE USED WHEN COORDINATED WITH THE DATE OF COMMENCEMENT. UNLESS STATED ELSEWHERE IN THE CONTRACT DOCUMENTS, INSERT ANY REQUIREMENTS FOR EARLIER SUBSTANTIAL COMPLETION OF CERTAIN PORTIONS OF THE WORK.)

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(INSERT PROVISIONS, IF ANY, FOR LIQUIDATED DAMAGES RELATING TO FAILURE TO COMPLETE ON TIME, OR FOR BONUS PAYMENTS FOR EARLY COMPLETION OF THE WORK.)

ARTICLE 5 BASIS FOR PAYMENT

5.1 CONTRACT SUM

5.1.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

5.1.2 The Contractor's Fee is: 3% of the Cost of Work plus an incentive fee as defined in 14.6.1.

(STATE A LUMP SUM, PERCENTAGE OF COST OF THE WORK OR OTHER PROVISION FOR DETERMINING THE CONTRACTOR'S FEE, AND DESCRIBE THE METHOD OF ADJUSTMENT OF THE CONTRACTOR'S FEE FOR CHANGES IN THE WORK.)

5.1.3 In the event the Chage Orders, the Contractor's Fee shall be increased or decreased by 3% plus inventive fee as defined in 14.6.1 of the cost of the net increased or decreased Work.

5.2 GUARANTEED MAXIMUM PRICE

5.2.1 The Drawings and Specifications are not yet sufficiently complete for the purpose of preparing a Guaranteed Maximum Price. When the Drawings and Specifications are sufficiently complete the Contractor shall propose a Guaranteed Maximum Price which shall be the sum of the estimated Cost of the Work and Contractor's Fee.

(INSERT SPECIFIC PROVISIONS IF THE CONTRACTOR IS TO PARTICIPATE IN ANY SAVINGS.)

5.2.1.1 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Contractor shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials or finishes or equipment, all of which, if required, shall be incorporated by Change Order.

5.2.1.2 The estimated Cost of the Work shall include Contractor's Contingency, a sum established by the Contractor for the Contractor's exclusive use to cover costs arising under Subparagraph 5.5.1.1 and other costs which are promptly reimbursable as Cost of the Work but not the basis for a Change Order.

5.2.2 The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include: (1) a list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal; (2) a list of allowances and a statement of their basis; (3) a list of the clarifications and assumptions made by the Contractor in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications; (4) the proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, congtingency, and other items and the fee that comprise the Guaranteed Maximum Price; (5) the date of Substantial Completion for the Renovation Work and the Expansion Work upon which the proposed Guaranteed Maximum Price is based; and (6) a schedule of the Construction Documents issuance dates upon which the dates of Substantial Completion are based.

(STATE THE NUMBERS OR OTHER IDENTIFICATION OF ACCEPTED ALTERNATES. IF DECISIONS ON OTHER ALTERNATES ARE TO BE MADE BY THE OWNER SUBSEQUENT TO THE EXECUTION OF THIS AGREEMENT, ATTACH A SCHEDULE OF SUCH OTHER ALTERNATES SHOWING THE AMOUNT FOR EACH AND THE DATE WHEN THE AMOUNT EXPIRES.)

5.2.3 The Contractor shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis or both.

5.2.4 Allowances, if any, are as follows:

(IDENTIFY AND STATE THE AMOUNTS OF ANY ALLOWANCES, AND STATE WHETHER THEY INCLUDE LABOR, MATERIALS, OR BOTH.)

5.2.5 Assumptions, if any, on which the Guaranteed Maximum Price is based are as follows:

5.2.6 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6 CHANGES IN THE WORK

6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Subparagraph 7.3.3 of AIA Document A201-1997.

6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Clause 7.3.3.3 of AIA Document A201-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of AIA Document A201-1997 shall have the meanings assigned to them in AIA Document A201-1997 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-1997 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Subparagraph 5.1.2 of this Agreement.

6.4 If no specific provision is made in Paragraph 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions

of Paragraph 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee

established for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COSTS TO BE REIMBURSED

7.1 COST OF THE WORK The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

7.2 LABOR COSTS

7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's approval. Payment of the salaries of the Contractor's project management, estimating, scheduling, safety and other personnel when working on items of work specifically related to the Project at the Contractor's principle office, Architect's office, job site field office or any other location for that portion of their time spent in the performance of the Work for this Project shall be included in the costs to be reimbursed. The cost of corporate officers, office administration and all corporate/company overhead are included in the Contractor's Fee. The cost of the Director of Business Development and Operation's Manager is also included in the Contractor's Fee except if they personally perform estimating or project management functions specifically for the Project.

(IF IT IS INTENDED THAT THE WAGES OR SALARIES OF CERTAIN PERSONNEL STATIONED AT THE CONTRACTOR'S PRINCIPAL OR OTHER OFFICES SHALL BE INCLUDED IN THE COST OF THE WORK, IDENTIFY IN ARTICLE 14 THE PERSONNEL TO BE INCLUDED AND WHETHER FOR ALL OR ONLY PART OF THEIR TIME, AND THE RATES AT WHICH THEIR TIME WILL BE CHARGED TO THE WORK.)

7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

7.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Subparagraphs 7.2.1 through 7.2.3.

7.3 SUBCONTRACT COSTS

7.3.1 Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts.

7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

7.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

7.4.2 Costs of materials described in the preceding Subparagraph 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

7.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. Cost for items previously used by the Contractor shall mean fair market value.

7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation,

installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

7.5.3 Costs of removal of debris from the site.

7.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

7.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

7.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

7.6 MISCELLANEOUS COSTS

7.6.1 That portion of insurance and bond premiums that can be directly attributed to this Contract:

7.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

7.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Subparagraph 13.5.3 of AIA Document A201-1997 or other provisions of the Contract Documents, and which do not fall within the scope of Subparagraph 7.7.3. Costs incurred in the performance of all inspections, tests or approvals required by the Contract Documents, laws, ordinances, rules, regulations or orders of public authorities having jurisdiction. Such costs include, but are not limited to, professional engineers' services, testing laboratory services, and soils engineers' services not paid directly by the Owner.

7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Subparagraph 3.17.1 of AIA Document A201-1997 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

7.6.6 Data processing costs related to the Work.

7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Owner's prior written approval; which approval shall not be unreasonably withheld.

7.6.9 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Owner.

7.7 OTHER COSTS AND EMERGENCIES

7.7.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

7.7.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.6 of AIA Document A201-1997.

7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

ARTICLE 8 COSTS NOT TO BE REIMBURSED

8.1 The Cost of the Work shall not include:

8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Subparagraphs 7.2.2 and 7.2.3 or as may be provided in Article 14.

8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

8.1.5 Rental costs of machinery and equipment, except as specifically provided in Subparagraph 7.5.2.

8.1.6 Except as provided in Subparagraph 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

8.1.7 Any cost not specifically and expressly described in Article 7.

8.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured.

9.2 Amounts that accrue to the Owner in accordance with the provisions of Paragraph 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

10.2 If a specific bidder among those whose bid are delivered by the Contractor to the Architect (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

10.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management

under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

12.1 PROGRESS PAYMENTS

12.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

12.1.3 Provided that an Application for Payment is received by the Architect not later than the last day of a month, the Owner shall make payment to the Contractor not later than the last working day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) calendar days after the Architect receives the Application for Payment.

12.1.4 With each Application for Payment, the Contractor shall submit the previous month's cost report along with copies of the major Subcontractor Payment Applications for the current month and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Subparagraph 7.3.8 of AIA Document A201-1997;

.2 add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 add the Contractor's Fee, reduce such sum by an amount for retainage equal to the sum of (i) the retainage provided for in Paragraph 12.1.8, plus (ii) ten percent (10%) of the Contractor's Fee. The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 subtract the aggregate of previous payments made by the Owner;

.5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by Paragraph 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and

.6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201-1997.

12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than ten percent (10%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors. Payment in full may be made to those Subcontractors whose work is satisfactorily completed and accepted by the Owner and the Contractor prior to Substantial Completion.

12.1.9 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Subparagraph 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

12.2 FINAL PAYMENT

12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and

.2 a final Certificate for Payment has been issued by the Architect.

12.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Subparagraph 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.5.1 of the AIA Document A201-1997. The time periods stated in this Subparagraph 12.2.3 supersede those stated in Subparagraph 9.4.1 of the AIA Document A201-1997.

12.2.4 If the owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand, in writing to Owner, that the Cost of the Work be determined by a third party or other dispute resolution mechanism. Such demand for determination by a third party or other dispute resolution mechanism shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment; failure to demand such determination by a third party or other dispute resolution mechanism within this 30 day period shall result in the amount reported by the Owner's accounts becoming binding on the Contractor. If the Contractor makes such demand but the Owner and the Contractor do not agree upon the third party or the other dispute resolution mechanism within 60 days after the demand, the Contractor shall be entitled to commence an action in the state court where the Project is situated to determine the Cost of Work. No such action, or any other action by Contractor against Owner, shall be commenced more than one year after the date of the Architect's final Certificate for Payment.

12.2.5 If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Paragraph 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 TERMINATION OR SUSPENSION

13.1 The Contract may be terminated by the Contractor, or by the Owner for convenience, as provided in Article 14 of AIA Document A201-1997. However, the amount to be paid to the Contractor under Subparagraph 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to

receive under Paragraph 13.2 below.

13.2 The Contract may be terminated by the Owner for cause as provided in Article 14 of AIA Document A201-1997. The

amount, if any, to be paid to the Contractor under Subparagraph 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

13.2.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

13.2.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Subparagraph 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Subparagraph, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

13.2.3 Subtract the aggregate of previous payments made by the Owner.

13.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Subparagraph 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

13.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Subparagraphs 5.1.2 and Paragraph 6.4 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 Where reference is made in this Agreement to a provision AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

14.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. (INSERT RATE OF INTEREST AGREED UPON, IF ANY.)

(USURY LAWS AND REQUIREMENTS UNDER THE FEDERAL TRUTH IN LENDING ACT, SIMILAR STATE AND LOCAL CONSUMER CREDIT LAWS AND OTHER REGULATIONS AT THE OWNER'S AND CONTRACTOR'S PRINCIPAL PLACES OF BUSINESS, THE LOCATION OF THE PROJECT AND ELSEWHERE MAY AFFECT THE VALIDITY OF THIS PROVISION. LEGAL ADVICE SHOULD BE OBTAINED WITH RESPECT TO DELETIONS OR MODIFICATIONS, AND ALSO REGARDING REQUIREMENTS SUCH AS WRITTEN DISCLOSURES OR WAIVERS.)

14.3 The Owner's representative is:

(NAME, ADDRESS AND OTHER INFORMATION.)
Ken Schultz
Penn National Gaming of West Virginia
711 Casino Magic Drive
Bay St. Louis, MS 39520

14.4 The Contractor's representative is:

(NAME, ADDRESS AND OTHER INFORMATION.)
Dennis Hilgenfeld
Howard Shockey & Sons, Inc.
P.O. Box 2530
Winchester, WV 22604

14.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

14.6 Other provisions:

14.6.1 Incentive Fee. Up to 1.5% of the cost of the work, based on the formulated-criteria listed below.

0.25% - Pre-construction services that bring value to the project team (constructability, pricing, subcontractor input, and competitiveness)
0.25% - Maintaining an agressive, mutually acceptable construction schedule

0.25% - Project administration (effective, timely project administration and control of the paperwork and job changes)
0.25% - Effective communication and coordination of construction activities with the existing, ongoing entertainment operations
0.25% - Quality of the work
0.25% - Project safety and public safety

Additionally, a line item of $50,000.00 shall be set up within Shockey's general conditions for a key-employees' bonus fund. This is a discretionary bonus fund that will be rolled into direct job cost on the approval of Penn National Gaming's Vice President of Design & Construction at job's end.

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997.

15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997, as amended by the parties, and attached hereto as Exhibit "A".

15.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

Document	Title	Pages

15.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 15.1.3, and are as follows:

(EITHER LIST THE SPECIFICATIONS HERE OR REFER TO AN EXHIBIT ATTACHED TO THIS AGREEMENT.)

Section	Title	Pages

15.1.5 The Drawings are as follows, and are dated unless a different date is shown below:

(EITHER LIST THE DRAWINGS HERE OR REFER TO AN EXHIBIT ATTACHED TO THIS AGREEMENT.)

Number	Title	Date

15.1.6 The Addenda, if any, are as follows:

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

ARTICLE 16 INSURANCE AND BONDS

(LIST REQUIRED LIMITS OF LIABILITY FOR INSURANCE AND BONDS. AIA DOCUMENT A201-1997 GIVES OTHER SPECIFIC REQUIREMENTS FOR INSURANCE AND BONDS.)

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

- ----------	----------
OWNER (SIGNATURE)	CONTRACTOR (SIGNATURE)
- ----------	----------
(PRINTED NAME AND TITLE)	(PRINTED NAME AND TITLE)

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

AIA DOCUMENT A201 - 1997
1997 EDITION - ELECTRONIC FORMAT

- ---

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. AUTHENTICATION OF THIS ELECTRONICALLY DRAFTED AIA DOCUMENT MAY BE MADE BY USING AIA DOCUMENT D401.

This document is not intended for use in competitive bidding.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference.

This document has been approved and endorsed by The Associated General Contractors of America.

- ---

TABLE OF ARTICLES

INDEX

ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

Insert A: 1.2.4 The Contract documents apply to contractor and each Subcontractor.

1.3 CAPITALIZATION

1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects.

1.4 INTERPRETATION

1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.5 EXECUTION OF CONTRACT DOCUMENTS

1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights. This Paragraph 1.6.1 shall not limit the Owner's rights to use the Drawings, Specifications, and other documents, which right is separately determined between Owner and Architect.

ARTICLE 2 OWNER

2.1 GENERAL

2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Subparagraph 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work after such request by Contractor.

2.2.2 Except for permits and fees, including those required under Subparagraph 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 72 hour period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such 72 hour period without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

3.1 GENERAL

3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

Insert B: 3.1.4 Observation of work by Architect or by employees of Owner or of Architect shall not be interpreted as relieving contractor from its responsibility for coordination of all work, its superintendence of the Work, and its scheduling and direction of the Work.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Subparagraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require.

3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect and Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as

a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and

regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect and Owner.

3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect and Owner.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.6 TAXES

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7 PERMITS, FEES AND NOTICES

3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of

the Work

which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded. Certificate of Inspection, and Use and Occupancy permits or licenses shall be delivered to the Owner upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment and delivery are included within the Contract Sum and Guaranteed Maximum Price.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.8 ALLOWANCES

3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents:

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.1 and (2) changes in Contractor's costs under Clause 3.8.2.2.

3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

Insert C: 3.9.2 The list of all supervisory personnel, including the Project Mnager and Superintendent, that the Contractor intends to use on the Project and a chain of command organizational chart is attached as Exhibit "A" & "B". The Contractor shall not engage supervisory personnel or utilize an organization and chain of command other than as set forth in Exhibit "A" & "B" and shall not change such personnel or form of organization without the written approval of the Owner.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The

Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria

that such services must satisfy. Pursuant to this Subparagraph 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

Insert D: 3.13.2 The contractor shall assure free convenient, unencumbered and direct access to properties neighboring the Project site for the Owners of such properties and their respective tenants, agents, invitees and guests.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. The Contractor shall maintain streets and sidewalks around the Project site in a clean condition. The Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas, and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas.

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.16 ACCESS TO WORK

3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

3.17 ROYALTIES, PATENTS AND COPYRIGHTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Paragraph 11.3, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

3.18.2 In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation

or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

4.1.2 Duties and responsibilities of the Architect as set forth in the Contract Documents shall not be restricted or modified, and limitations of authority of the Architect as set forth in the Contract Documents shall not be extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect whose status under the Contract Documents shall be that of the former Architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Paragraph 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1.

4.2.3 The Architect will not be responsible to the Contractor for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible to the Contractor for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

4.2.4 Communications Facilitating Contract Administration. Owner and Contractor shall communicate directly with each other regarding administration of the Contract documents and shall endeavor to advise Architect of the resolution of all material issues regarding the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.6 The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted

for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and

3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Paragraph 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions so rendered in good faith.

4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.3 CLAIMS AND DISPUTES

4.3.1 DEFINITION. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2 TIME LIMITS ON CLAIMS. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

4.3.3 CONTINUING CONTRACT PERFORMANCE. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Subparagraph 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4 CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. lf the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further

proceedings pursuant to Paragraph 4.4.

4.3.5 CLAIMS FOR ADDITIONAL COST. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.6.

4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Paragraph 4.3.

4.3.7 Claims for Additional Time

4.3.7.1 If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

4.3.8 INJURY OR DAMAGE TO PERSON OR PROPERTY. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

4.3.10 [Intentionally Omitted]

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 [Intentionally Omitted]

4.4.2 [Intentionally Omitted]

4.4.3 [Intentionally Omitted]

4.4.4 [Intentionally Omitted]

4.4.5 [Intentionally Omitted]

4.4.6 [Intentionally Omitted]

4.4.7 [Intentionally Omitted]

4.4.8 [Intentionally Omitted]

4.5 MEDIATION

4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5 shall, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

4.5.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

4.6 ARBITRATION

4.6.1 Upon the agreement of Owner and Contractor any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Subparagraphs 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Paragraph 4.5.

4.6.2 Upon the agreement of Owner and Contractor, Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

4.6.3 A demand for arbitration shall be made within the time limits specified in Subparagraphs 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Paragraph 13.7.

4.6.4 [Intentionally Omitted]

4.6.5 CLAIMS AND TIMELY ASSERTION OF CLAIMS. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

4.6.6 JUDGMENT ON FINAL AWARD. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 5 SUBCONTRACTORS

5.1 DEFINITIONS

5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such

substitute.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

Insert E: 5.3.2 Notwithstanding any provision of Subparagraph 5.3.1 any part of the Work performed for the Contractor by a Subcontractor or its Sub-subcontractor shall be pursuant to a written subcontract between the Contractor and such Subcontractor. Each such subcontract shall, where the context so requires, contain provisions that require that such Work be performed in accordance with the requirements of the Contract Documents.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and or for convenience pursuant to Paragraph 14.4 only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and

.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Paragraph 4.3.

6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Other until subsequently revised.

6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

6.2 MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the

Contract Documents.

6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Subparagraph 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

7.1 GENERAL

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

.1 change in the Work;

.2 the amount of the adjustment, if any, in the Contract Sum; and

.3 the extent of the adjustment, if any, in the Contract Time.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 unit prices stated in the Contract Documents or subsequently agreed upon;

.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 as provided in Subparagraph 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 additional costs of supervision and field office personnel directly attributable to the change.

7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs.

7.3.9 When the Owner and Contractor agree concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

8.1.2 The date of commencement of the Work is the date established in the Agreement.

8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Paragraph 9.8.

8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

8.2 PROGRESS AND COMPLETION

8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3. A copy of any claim for extension shall be delivered to the Owner, and the Contractor shall immediately take all steps reasonably possible to lessen the adverse impact of such delay on Owner.

8.3.3 This Paragraph 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect and Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect and Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

9.3.1.1 As provided in Subparagraph 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, but not yet included in Change Orders.

9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Subparagraph 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Subparagraph 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Subparagraph 3.3.2, because of:

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or another contractor;

.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 persistent failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

9.6 PROGRESS PAYMENTS

9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2, 9.6.3 and 9.6.4.

9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

Insert F: Contractor shall deliver to Owner a partial release on a form acceptable to the Owner upon submission of each Certificate for Payment.

9.7 FAILURE OF PAYMENT

9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. The Contractor shall not stop the Work during the pendency of a bona fide dispute not involving Contractor payment between the Owner and the Contractor.

9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and when all required occupancy permits within the Contract of the Contractor, if any, have been issued so that the Owner can occupy or utilize the Work for its intended use.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the

Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. After substantial completion, the Contractor shall secure and deliver to the Owner written warranties and guarantees from its Subcontractors, Sub-subcontractors and suppliers bearing the date of Substantial Completion or some other date as may be agreed to by the contract documents. The Contractor is responsible for the warranty of all Work, whether performed by it or by its subcontractors at any time. The Contractor shall assemble for the Architect's approval three complete copies in looseleaf binders all operating and maintenance data from all manufacturers whose equipment or material is or will be installed in the work, including names, addresses and telephone numbers of subcontractors, service organizations, manufacturers, and sources for supply of parts. The Contractor shall also prepare a checklist or schedule showing the type of lubricant to be used at each point of application, and the intervals between lubrication for each item or equipment.

9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Clause 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or will be paid as

follows: (i) with respect to previous Applications for Payment for which the Contractor has been paid in full, such indebtedness has been paid or otherwise satisfied, and (ii) with respect to the Application for Final Payment or other Applications for Payment for which the Contractor has not received full payment, such indebtedness will be paid only, as a condition precedent, promptly after the Contractor's actual receipt of full payment from the Owner. (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to

final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents; or

.3 terms of special warranties required by the Contract Documents.

9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Contractor shall deliver to Owner a final release on a form acceptable to the Owner upon receipt of final payment.

Insert G: 9.11 CONDITIONED PAYMENTS

Insert H:

Insert I: 9.11.1 Nothing in the Agreement or other Contract Documents is intended and may not be construed to waive, abridge or adversely affect the Contractor's right to make the Contractor's actual receipt of payment from the Owner a condition precedent to the Contractor's payment (whether progress, final or any other payment) to Subcontractors, suppliers or other contractees. If the Contractor or its contractees are required to submit affidavits of payment, waivers of rights, releases of claims, or the like, such requirements will not be deemed effective as to unpaid contract balances and retainage until same are actually received by the Contractor from the Owner.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Clauses 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 3.18.

10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

10.2.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

10.3 HAZARDOUS MATERIALS

10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Subparagraph 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

10.4 The Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

10.6 EMERGENCIES

10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in

Paragraph 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located and acceptable to Owner such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

.2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 claims for damages insured by usual personal injury liability coverage;

.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 claims for bodily injury or property damage arising out of completed operations; and

.8 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.18.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Paragraph 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Subparagraph 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

11.2 OWNER'S LIABILITY INSURANCE

11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Clauses 11.1.1.2 through 11.1.1.5.

11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Liabilities Insurance coverage under Paragraph 11.1.

11.4 PROPERTY INSURANCE

11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by Owner and Contractor, until final payment has been made as provided in Paragraph 9.10 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs in excess of $1,000.00 not covered because of such deductibles and Contractor shall be responsible for the first $1,000.00 of the deductible for a claim of property damage under the Builder's Risk or equivalent policy.

11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

11.4.1.5 Partial occupancy or use in accordance with Paragraph 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

11.4.2 BOILER AND MACHINERY INSURANCE. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.4.3 LOSS OF USE INSURANCE. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Subparagraph 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Paragraph 11.4. Each policy shall contain all generally applicable conditions, definitions,

exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Paragraph 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Subparagraph 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Paragraph 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Paragraphs 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

11.5 PERFORMANCE BOND AND PAYMENT BOND

11.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

12.1.2 If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to its being covered, the Architect, with Owner's approval, may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2 CORRECTION OF WORK

12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated,

installed or completed. Costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition to the Contractor's obligations under Paragraph 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Subparagraph 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Paragraph 2.4.

12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Paragraph 12.2.

12.2.3 The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.5 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Subparagraph 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

13.3 WRITTEN NOTICE

13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party

giving notice.

13.4 RIGHTS AND REMEDIES

13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Owner shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Subparagraph 13.5.3, shall be at the Owner's expense.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

13.6 INTEREST

13.6.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1 As between the Owner and Contractor:

.1 BEFORE SUBSTANTIAL COMPLETION. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

.2 BETWEEN SUBSTANTIAL COMPLETION AND FINAL CERTIFICATE FOR PAYMENT. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

.3 AFTER FINAL CERTIFICATE FOR PAYMENT. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Paragraph 3.5, the date

of any correction of the Work or failure to correct the Work by the Contractor under Paragraph 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

.3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Subparagraph 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 [Intentionally Omitted]

14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Paragraph 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

14.1.3 If one of the reasons described in Subparagraph 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.3.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

Insert J: .5 notwithstanding anything to the contrary herein the Owner shall give the Contractor written notice of grounds for termination for cause and afford the Contractor reasonable opportunity to cure before exercising any rights or remedies under Paragraph 14.2

14.2.2 When any of the above reasons exist, the Owner, upon certification by the Architect that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 accept assignment of subcontracts pursuant to Paragraph 5.4; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Subparagraph 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work done by Contractor to the date of termination not previously paid for, less sums already received by Contractor on account of the portion of the Work performed. If at the date of such termination, Contractor has properly prepared or fabricated off the Project site any goods for subsequent incorporation in the Work, and if Contractor delivers such goods to the Project site or to such other place as the Owner shall reasonably direct, the Contractor shall be paid for such goods or materials.

EXHIBIT 21

SUBSIDIARIES OF THE REGISTRANT

Name	Jurisdiction of Incorporation or Organization
Mountainview Thoroughbred Racing Association	Pennsylvania
Pennsylvania National Turf Club, Inc.	Pennsylvania
Penn National Holding Company	Delaware
Penn National Gaming of West Virginia, Inc.	West Virginia
PNGI Charles Town Gaming Limited Liability Company	West Virginia
PNGI Charles Town Food & Beverage, LLC	West Virginia
Tennessee Downs, Inc.	Tennessee
Penn National GSFR, Inc.	Delaware
PNGI Pocono, Inc.	Delaware
The Downs Racing, Inc.	Pennsylvania
Northeast Concessions, Inc.	Pennsylvania
Mill Creek Land, Inc.	Pennsylvania
Backside, Inc.	Pennsylvania
Wilkes Barre Downs, Inc.	Pennsylvania
CRC Holdings, Inc.	Florida
BSL, Inc.	Mississippi
BTN, Inc.	Mississippi
eBetUSA.com, Inc.	Delaware
Penn National	

Speedway, Inc.
Pennsylvania Sterling Aviation, Inc.
Delaware Penn Millsite, Inc.
Colorado Penn Bullpen, Inc.
Colorado Penn Bullwhackers, Inc.
Colorado Penn Silver Hawk, Inc.
Colorado CHC Holdings, Inc. Florida CHC Casinos Manitoba Limited
Ontario CHC Casinos Canada Limited Nova Scotia
Casino Rama Services, Inc. Ontario CHC Supplies Limited Nova Scotia

EXHIBIT 23

CONSENT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

Penn National Gaming, Inc.
Wyomissing, Pennsylvania

We consent to the incorporation by reference in the Registration Statements on Form S-3 (SEC File Nos. 33-98642 and 333-63780) and Form S-8 (SEC File Nos. 33-98640 and 333-61684) of our report dated January 25, 2002, except for Note 12 which is as of March 27, 2002, relating to the consolidated financial statements of Penn National Gaming, Inc. and subsidiaries for the year ended December 31, 2001 appearing in the Company's Annual Report on Form 10-K.

BDO SEIDMAN, LLP

Philadelphia, Pennsylvania
March 27, 2002